THE TWO HAGUE CONFERENCES

JOSEPH H. CHOATE

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BY

JOSEPH H. CHOATE

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INTRODUCTION

In a recent and much-used manual of international law, it is said that "the development of international law within the period since the call for the First Peace Conference at The Hague in 1898 has been greater than that during the 250 years preceding, from the peace of Westphalia in 1648 to the call for The Hague Conference in 1898." Accepting this statement as sufficiently accurate for present purposes, without stopping to consider whether it is wholly tenable, it necessarily follows that any work showing the nature of the Conferences, their procedure and their results, renders a service to the public. Especially must this be so if the author is a man of wide experience and balanced judgment, familiar with the development of international law and the methods of diplomacy and writes with first-hand knowledge of the subject. These qualifications will readily be conceded to Mr. Choate who represented, as First Delegate, the United States at the Second Hague Peace Conference, and who might pardonably say, *quorum pars magna*

fui, were his modesty, as shown by these Lectures, not equal to his ability. To have contributed in a large degree to the success of the Second Conference, it was necessary that he should have mastered the achievements of the First Conference and read aright its spirit; and his profound knowledge of international relations gave him that keen sense of distinguishing between the practicable and the impracticable without which his rôle as mediator on at least one very important occasion would have been impossible. Mr. Choate's learning, however, rests lightly upon his shoulders, and though permeating the Lectures, it nowhere obtrudes itself. Indeed, it rather passes unnoticed, for he has chosen to lay before his original audience at Princeton as well as the wider public to which the printed word appeals, only the larger and enduring results of the Conference as he looks back upon them after years of thought and reflection.

If the two conferences have rendered a tithe of the service claimed for them, it is evident that the international conference as such should become a permanent institution in the sense that successive conferences should meet at stated periods. Opportunity should be given to the nations to prepare adequately for the meetings. The conference

should organize itself, determine its procedure, elect its officers, and conduct its proceedings according to the wisdom of all the Powers, not under the domination of any one. We should be deeply grateful to the Czar for the idea of the conference, but our gratitude need not extend to the point of yielding to him or to his advisers the calling of the conference, the determination of its programme, the selection of its officers, and the method of procedure to be adopted. Tutelage might be necessary in the first instance, for the conference was a Russian proposal and in the nature of an experiment. The Second Conference composed of delegates of forty-four nations was, however, an experiment only in so far as it was uncertain whether a body composed of representatives of practically all the nations could act as easily and usefully as one composed of representatives of fewer nations. When this doubt was removed by the success of the Second Conference, the reason for Russian initiative and Russian guidance, not to say domination, ceased, and the conference becomes international in origin as well as in composition.

Secretary Root instructed the American delegation to the Second Conference to "favor the adoption of a resolution by the Conference providing

for the holding of further conferences within fixed periods, and arranging the machinery by which such conferences may be called and the terms of the programme may be arranged, without awaiting any new and specific initiative on the part of the Powers or any one of them." Mr. Choate personally took charge of the matter and after many difficulties, to which he humorously refers in the Lectures, he succeeded not only in bringing about an agreement among his colleagues, but actually persuaded the first Russian delegate, who was also President of the Conference, to propose that a third conference meet approximately in 1915, that two years in advance of the meeting a preparatory committee of the Powers be appointed to consider what subjects were ripe for international agreement, to prepare a programme and to devise a method of organization and procedure for the conference itself. It is not too much to say that this very important result was due to Mr. Choate's firmness and tact, for at one time during the negotiations an agreement seemed impossible, and he was obliged to inform the President of the Conference that in case of failure to reach an agreement, the American Delegation would consider itself obliged, pursuant to instructions, officially to present the

subject to the Conference in plenary session. The result was a compromise; and while the recommendation does not go so far as the friends of a periodic conference would like, its acceptance in its present form has rendered the conference a permanent international institution. Mr. Choate rightly says that the recommendation does not make it the duty of any Power to call the conference. It is well known, however, that the Second Conference was in reality initiated by President Roosevelt, not by the Czar of Russia, and that President Roosevelt chivalrously withdrew when the termination of the Russo-Japanese war made it possible for the Czar to turn his thoughts to peace. This action of President Roosevelt is officially recognized in the opening lines of the Final Act which states that the Conference was "proposed in the first instance by the President of the United States." What one President did, another may do, should the same necessity arise.

The international conference is, as Mr. Choate clearly states, a diplomatic, not a parliamentary body, and he explains the difference by the fact that unanimity is required in the proceedings of the one, whereas a majority suffices in the other. He also shows that the conference as such does not bind the nations by its action, but leaves the

conventions and other agreements adopted by it to be approved by each of the nations in accordance with its constitution, and that the individual nation is only bound by such subsequent approval. This would appear to be necessarily the case in an assembly of equals; for if the states be legally equal, no state can or should coerce another. The conference therefore proposes projects to the nations; it does not, as is the case with parliaments, impose them. If the conference is to be considered as a legislature, it is only a legislature ad referendum; but whatever be its nature, it has come to be considered the organ of the society of nations for the development of international law. The expression "society" necessarily presupposes a law to regulate the intercourse of the members of the society, a fact tersely stated in the familiar expression of Cicero, *Ubi societas, ibi jus.*

For centuries this society has gradually been taking definite form and shape until at present it consists of all nations which accept and apply the principles of international law. A union of a loose and flexible nature, as distinct from a political union or federation, therefore exists, but the nations, curiously enough, have been as unconscious of its existence as Monsieur Jourdain in Molière's immortal comedy was of the fact that

he had talked prose for the past forty years. The nature of this society and the purpose of the conferences at The Hague have never been more admirably stated than by Mr. Choate's distinguished colleague, Monsieur Léon Bourgeois, who says that "The purpose of The Hague Conference is the juridical organization of international life, the formation of a society of law among the nations. In order that this society may come into being and live, the following conditions are essential: (1) the universal assent of the nations to the establishment of a truly international system; (2) the acceptance by all of the same conception of the law common to all, of the same bond between the large and the small, since they are all equal in point of consent and responsibility; (3) the precise and detailed application of these principles successively to all fields of international relations in peace as well as in war."*

Supposing, however, an agreement upon the principles of law which should regulate the conduct of nations in their mutual intercourse, we know that differences of opinion are sure to arise between nations as between individuals regarding the interpretation and application of the law.

*Léon Bourgeois, *Pour la société des nations* (1910), p. 285.

Therefore, there should be called into being international tribunals for the interpretation and application of principles of law, just as national tribunals exist for like purposes. Mr. Choate devoted his energies to the creation of two such tribunals, the International Court of Prize and the Court of Abitral Justice. Through his timely intervention and conciliatory attitude in the question of the prize court, he was able to adjust apparently irreconciliable differences. He generously places the compromise to the credit of the American Delegation, but it was in fact his personal achievement, and the fundamental agreement upon the principles of an international Court of Prize is his contribution to the establishment of that Court. But the Prize Court deals with questions arising out of a state of war. It is essential to the ordinary administration of justice between nations that an international tribunal exist for the decision of controversies arising in time of peace, now fortunately the normal relation between states. Therefore, Mr. Choate urged upon the Conference, in season as well as out of season, the creation of a truly permanent court composed of judges "acting under a sense of judicial responsibility," to quote the happy phraseology of Secretary Root's instructions.

After weeks of doubt and uncertainty, a project of thirty-five articles regulating the organization, jurisdiction and procedure of a truly permanent court of arbitral justice was adopted by the Conference, with the recommendation, as stated by Mr. Choate, that the court be established when the Powers had agreed, through diplomatic channels, upon a method of appointing the judges. This is also a triumph with which Mr. Choate credits the American Delegation, but the official acts and documents of the Conference tell another story, and history will count Mr. Choate as among the founders of the International Court when it has been established.

But a law would be of little importance and international tribunals would be little better than empty courts unless there were an agreement by the nations to observe the principles of law in their mutual relations and to submit to the determination of the courts disputes which arise concerning either the existence or application of principles of law. Therefore, acting under the instructions of Secretary Root, Mr. Choate proposed a general treaty of arbitration which pledged the nations to submit to arbitration differences of a legal nature and especially disputes concerning the interpretation or application of in-

ternational treaties or conventions, reserving from the obligation to arbitrate, disputes, which although of a legal nature, involve the independence, vital interests and honor of the contracting parties. After weeks of discussion and heated debate in which the leading delegates participated, the proposed treaty was defeated, primarily, through the irreconciliable opposition of Germany. If Mr. Choate's intervention in the discussion of the Prize Court can be cited as an instance of gentle persuasion and of gracious and happy phrase, his addresses on the subject of arbitration glow with emotion and the intensity of conviction.

It has been both a pleasure and an honor to supplement Mr. Choate's account of the Conferences by a few brief paragraphs devoted to the services which he himself rendered and which are hidden even to the most careful reader of the Lectures. As one associated with him at the Second Conference, I would be remiss if, in conclusion, I did not mention his courteous and sympathetic bearing towards his colleagues of the American Delegation, which made coöperation as easy and profitable as its memory is pleasing and abiding.

JAMES BROWN SCOTT.

I

THE FIRST CONFERENCE

THE FIRST CONFERENCE*

It was on the 24th of August, 1898—a year which was marked by the death of Bismarck, whose policy of blood and iron had secured the peace of Europe for an entire generation, and by our Spanish war, which had brought the United States into prominence as a great world power—that the youthful Emperor of Russia, Nicholas II, surprised the world by communicating to each of the diplomatic representatives of foreign nations accredited to his Court, his famous proposition for a World's Peace Conference, which meeting, a year later, in answer to his call, by its achievements and its aspirations, is destined to live in history as a great landmark.

The startling summons was due, I believe, to his own initiative, his own love of peace with foreign nations, inspired, no doubt, by the example of Alexander I, who, at about the same age, nearly one hundred years before, in 1804, in a despatch to his envoy at London, in the heat of the contest of the nations with Napoleon, pro-

*The numbers in the text refer to notes at the end of the volume.

posed that at the conclusion of the general war, the nations of Europe should unite in a treaty which would determine, to use his own language: "the positive rights of nations, assure the privilege of neutrality, assert the obligation of never beginning war until all the resources which the mediation of a third party could offer have been exhausted, having by this means brought to light the respective grievances, and tried to remove them."

"It is on such principles," he said, "as these that one could proceed to a general pacification, and give birth to a league of which the stipulations would form, so to speak, a new code of the law of nations, which, sanctioned by the greater part of the nations of Europe, would without difficulty become the immutable rule of the Cabinets, while those who should try to infringe it would risk bringing upon themselves the forces of the new Union."[1]

It is true that Alexander I was a dreamer. But what a glorious dream it was in the midst of that carnival of blood and slaughter which deluged the first years of the Nineteenth Century!

It was in this spirit that the youthful Emperor, who had recently come to the throne of the

Czars, proposed to the Nations a Conference to be held at The Hague in the closing year of the century, thinking, he declares, "that the present moment would be very favorable for seeking, by means of international discussion, the most effectual means of insuring to all peoples the benefits of a real and durable peace, and, above all, of putting an end to the progressive development of the present armaments. The maintenance of general peace, and a possible reduction of the excessive armaments which weigh upon all nations, present themselves in the existing condition of the whole world, as the ideal towards which the endeavors of all governments should be directed."[2]

The terrible burden upon all the nations of these excessive and growing armaments has nowhere been so vividly described, not even by the most ardent advocates of peace. He declares that they "strike at the public prosperity at its very source. The intellectual and physical strength of the nations, labor and capital, are for the major part diverted from their natural application, and unproductively consumed. Hundreds of millions are devoted to acquiring terrible engines of destruction, which, though to-day regarded as the last word of science, are destined to-morrow to

lose all value in consequence of some fresh discovery in the same field. The economic crises, due in great part to the system of armaments, and the continual danger which lies in this massing of war material, are transforming the armed peace of our days into a crushing burden, which the peoples have more and more difficulty in bearing. It appears evident, then, that if this state of things were prolonged, it would inevitably lead to the very cataclysm which it is desired to avert, and the horrors of which make every thinking man shudder in advance."[3] Another dream which it will take perhaps another century to realize!

There was no other object proposed for the Conference in this first declaration than to limit, and, if possible, in some way to reduce the terrible armaments and the fatal budgets which were involved in their maintenance.

Favorable replies having been received from the other powers, Count Mouravieff, the Foreign Secretary of the Czar, on January 11, 1899, issued a circular, in which it is stated that since his proposal of August 24, only four months before, "notwithstanding the strong current of opinion which exists in favor of the ideas of general pacification, the political horizon has recently un-

dergone a decided change," and that "several powers have undertaken fresh armaments, striving to increase further their military forces."[4]

But, in spite of all that, he proposes a preliminary exchange of ideas between the powers, with the object of "seeking without delay means for putting a limit to the progressive increase of military and naval armaments, a question the solution of which becomes evidently more and more urgent in view of the fresh extension given to these armaments," and, secondly, "of preparing the way for a discussion of the questions relating to the possibility of preventing armed conflicts by the pacific means at the disposal of international diplomacy," and suggesting a programme for the Conference, which was in part accepted and followed by it when it met.[5]

It appears, by the answer of Lord Salisbury, that not only England, but Russia itself, had participated in this recent increase.[6]

The Conference met at The Hague on the 18th of May, the Emperor's birthday, in the famous "House in the Wood," the summer palace of the Dutch royal family—twenty-six Nations, including, besides those of Europe, the United States of America and Mexico alone of American nations, and China, Japan, Persia and Siam, each

represented, I believe, by the most competent men that could be selected for such a distinguished service, our own delegation consisting of Andrew D. White, Seth Low, Stanford Newell, Admiral (then Captain) Mahan, representing our Navy, Captain Crosier, of the United States Army, with Frederick William Holls as Secretary.

Notwithstanding the declared object of the Conference, concurred in, actually or professedly, by all the Nations, these terrible and oppressive armaments have gone on steadily increasing from that day to this, and are now multiplying at a rate more excessive than ever. They have become of such enormous weight and so burdensome to the people of many nations, that the cataclysm prophesied by the Emperor in his first rescript, "the horrors of which make every thinking man shudder in advance," seems now to be actually impending.

Strikes of a most formidable character, arising, in large measure, from the burdens resting upon the people, are the threatening symptoms of the approaching storm.

Even in the last session of Parliament the First Lord of the British Admirality, speaking evidently, with the full authority of his Government, has declared its solemn purpose to keep its naval

armaments sixty per cent. or more ahead of those of any other nation, and has thus issued a direct challenge to Germany to approach within that distance. Possibly this was with the hope of forcing Great Britain's great rival to make or to listen to overtures for an agreement. But he little appreciates the spirit of the German Nation or its Emperor, who believes that they will decline the challenge.

As soon as the Conference of 1899 was organized, the subject which had been the impelling cause of its gathering was referred to a committee which included many of its most able and distinguished members, by whom it was discussed. In concrete form, Colonel Gilinsky, of Russia, proposed, "as to armies, an international agreement for the term of five years, stipulating for the non-augmentation of the present number of troops kept in time of peace" and "the maintenance, for the term of five years, of the amount of the military budget in force at the present time," and "as regards navies, the acceptance in principle of fixing for a term of three years the amount of the naval budget, and an agreement not to increase the total amount for this triennial period," and he made a very earnest and honest appeal for the adoption of these measures.[7]

The chief spokesman in opposition was the representative of the Emperor of Germany,[8] and, after his response, the matter was referred to a sub-committee, who reported that with the exception of Colonel Gilinsky, they were unanimously of opinion that the scheme proposed was impracticable and therefore could not be approved, and that a more profound study of the question by the Governments was desirable.[9]

Thanks, however, to the most eloquent and impassioned appeal of Monsieur Léon Bourgeois. the first delegate of France, a resolution was unanimously adopted, that "the Committee considers that a limitation of the military charges which now weigh upon the world is greatly to be desired in the interests of the material and moral welfare of humanity," and, at the end, the Conference, in its final plenary session, unanimously adopted the resolution proposed by the Committee and remitted the subject to further study by the Nations, who, unhappily, do not seem to have yet begun the study.[10]

There is no doubt that in the condition of Europe at that time, the question was practically impossible of solution, and no other result could have been anticipated from the time the Conference met.

The position of our own representatives in the matter is worth noting. The delegation of the United States concurred in the result which had been reached as the only practicable solution of the Russian proposal: "The delegation wishes to place upon the record that the United States in so doing does not express any opinion as to the course to be taken by the states of Europe, . . . and expresses a determination to refrain from enunciating opinions upon matters, into which, as they concern Europe alone, the United States has no claim to enter," adding that "the . . . military and naval armaments of the United States are at present so small, relatively, to the extent of territory and the number of the population, as well as in comparison with those of other nations, that their size can entail no additional burden or expense upon the latter, nor can even form a subject for profitable mutual discussion."[11]

And so the Nations of Europe were left free, without any check whatever from the Conference, to increase their military and naval armaments,—a freedom of which they rapidly took advantage.

We may therefore dismiss, with whatever disappointment we may feel, the subject of limitation of armaments by an international Conference, because I believe it is a question that never can be

so settled, that can only be determined by treaties or agreements between the individual nations who maintain the armaments, either two by two, or all together, and that to subject such a question to determination by a Conference which now consists of forty-four nations, of which only eight or ten have armaments worth speaking of, and all the rest are without any considerable armaments, is practically an impossibility.

I turn, therefore, with great pleasure, to present very briefly the great things which the Conference of 1899 did accomplish, and which contributed, as I believe, very largely to the advancement of civilization, the mitigation of the horrors of war, and the practical promotion of the cause of peace.

We need hardly more than mention the convention agreed upon by the assembled Nations with respect to the laws and customs of war on land, which was largely of a technical nature. It determined the qualifications of belligerents, and regulations relating to prisoners of war, tending to ascertain and ameliorate their condition, and the rules governing their conduct and treatment. It also concerned itself with the treatment of the sick and wounded, with spies, flags of truce, capitulations and armistice, and the mili-

tary authority over hostile territory, the detention of belligerents, and the care of the wounded in neutral countries, and other matters of a purely technical character.[12] But these, though technical, were all in the spirit of an enlarged humanity, and tended, in a considerable degree, to mitigate the horrors of war.

This codification of the laws and customs of land warfare was based upon the Laws and Customs of Warfare adopted by the Brussel's Conference in 1874, which in turn grew out of Dr. Francis Lieber's Instructions for the Government of Armies in the Field, known as General Orders No. 100, of 1863.[13] So the United States may claim a special share in their origin. At Brussels they were made more specific, and in this Conference of 1899 their scope was broadened and they seem to have been made binding upon all the parties attending.

There were three special declarations adopted which concerned the customs of war in connection with modern inventions and improvements, which greatly interested the entire Conference. The first prohibition forbade, for a term of five years, the launching of projectiles and explosives from balloons, or by other new methods of a similar nature.[14] This was continued by the

Second Conference of 1907, for a period extending to the close of the Third Conference.[15] While the Second Conference was yet in Session, news came from Germany that a dirigible balloon, with a speed of thirty miles an hour, had made a successful ascent, and that in France a cigar-shaped airship had made thirty-one leagues an hour with the wind and eighteen leagues against the wind, and had manœuvred successfully in the environs of Paris. Predictions were freely indulged in that in four or five years the air would be as full of airships as the streets then were of automobiles.

Fortunately, this prophecy has not yet been quite fulfilled, although progress in that direction has been so rapid, that we may well hope that the Third Conference will make the prohibition perpetual, in full sympathy with the declaration of Lord Reay, one of the British Delegates in the Second Conference, that "two elements, the earth and the sea, are quite sufficient for military operations, and that the air should be left free." "What purpose," he asked, "will be served by the protective measures already adopted for war on land, if we open to the scourge of war a new field more terrible perhaps than all the others?"[16] Unless, indeed, some future Conference should

be of the opinion expressed by a celebrated Austrian statesman, that "all the armaments in the world will be rendered obsolete by the advent of war-ships in the air"[17] and should, from motives of economy, adopt them as a substitute for all their existing armies and navies. As the matter stands, the Senate of the United States ratified this prohibition as adopted by the Second Conference on March 12, 1908.

In the same spirit of humanity, the Conference of 1899, after much discussion, agreed to abstain from the use of projectiles, the object of which is diffusion of asphyxiating or deleterious gases,[18] and from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope that does not entirely cover the core, or is pierced with incisions.[19]

The Nations assembled, for the first time unanimously accepted the Red Cross Convention of Geneva of 1864 and ratified the same with some amendments, as applied to naval warfare, all tending directly in the interest of humanity.[20]

In the course of the discussions which this subject evoked, interesting objections were made by certain Eastern nations to the provision that all hospital ships shall make themselves known by

hoisting, together with their national flags, a white flag with a red cross provided by the Geneva convention. These objections, based on religious grounds, indicate the character of the Conference as not confined to Christian Nations, but as being of a world-wide character.

For instance, the First Delegate of Persia declared that, pursuant to instructions from his government, Persia would claim as a distinctive flag for hospital ships, a white flag with a red sun, the cross being impossible on account of objections likely to be raised in a Mohammedan army.

To the same effect the Royal Government of Siam reserved the right to change on Siamese hospital ships the emblem of the Geneva flag to a symbol sacred in the Buddhistic cult, and calculated to increase the saving authority of the flag.

The representative of Turkey also declared that on all occasions where Turkish hospital ships have to perform their mission, the emblem of the Red Cross would be replaced by the Red Crescent.

The free participation on equal terms, of these Eastern Nations in the Hague Conferences, without regard to race or religion, the absolute and equal sovereignty of each being fully recognized by all the rest, suggests the hope and warrants

the belief that, at any rate, we have seen the last of religious wars, which for so many centuries, desolated Europe, although Italy, at the moment, seems doing her best to provoke one. Christians against Mohammedans, Catholics against Protestants, made war the chief business of nations for many ages. For a long era, it seemed as if the coming of the Prince of Peace was at last producing more wars than it prevented. What a terrible idea it was to couple His sacred name and cross with the terrible engines of destruction under the standard "In hoc signo vinces." No more wars, at any rate, for Christ's sake or in His name. His cross will appear upon the battlefield only to bring healing to the sick, help to the wounded and euthanasia to the dying. Perhaps these Geneva Conferences are, to the friends of peace, the best sign of the times. They bring together all the Nations in very close touch in the holy cause of humanity, and do much to promote the idea of the brotherhood of man.

The original initiative of the Red Cross movement having been taken by the Swiss federal government, it was decided that that Government should continue to enjoy the well merited honor of leadership in all matters pertaining to

the Geneva convention, and it was recommended to the Government to call a further conference at an early day for that purpose.[21]

Professor de Martens, who was President of the Committee which had in charge the subject,—one of the greatest international lawyers or jurists of his time, and who was also an active and influential member of the Second Conference in 1907, and whose untimely death shortly after the close of that Conference was justly lamented by all Nations, has expressed his sense of the value of this portion of the work of the Conference of 1899 in the following emphatic language:

"Finally, the Red Cross treaty for times of naval warfare, signed by the Conference at The Hague, is the happy solution of the question which the Powers of Europe have been studying for thirty years. Since 1868 the 'additional articles' to the treaty of Geneva have existed, whereby the beneficent influence of the treaty of Geneva on wounded and sick soldiers was also extended to sea combats. For thirty-one years diplomatic negotiations have been carried on on this question; all the Red Cross conferences which have taken place in the last twenty years have proclaimed the necessity of recognizing the Red Cross treaty for the sick and wounded in naval

warfare. But nothing effectual was accomplished up to the Conference at The Hague. It was this Conference that caused the final adoption by (twenty-six) powers of the principle whereby the wounded in times of naval warfare shall have the same right to have their person, their life, their health and their property respected, as the wounded in case of warfare on land."[22]

In view, however, of the total failure of the Conference to act at all upon the primal question for which the Emperor of Russia had called it into being, and the recommendation for the further study of that subject by all the Governments, its other work, being of the minor and technical character already indicated, might perhaps have been as well accomplished by diplomatic correspondence. The fame of the Conference, therefore, must and will safely rest upon the great work which it did accomplish by the convention, unanimously agreed upon for the peaceful adjustment of international differences, and especially because it conveyed to the world the united views of all the assembled Nations upon the wisdom and expediency of arbitration as a substitute for war, and because of the creation by it of the first international court to carry that principle into effective operation.

It must be remembered that prior to the meeting of this Conference, there had been no general agreement of the Nations, tacit or expressed, upon these subjects, and no international law of an expressed and defined character which regulated them. Nor must it be forgotten that the Conference itself was not a congress capable of deciding, by the vote of the majority, like a parliament or legislative body, any question that came before it, but simply an assemblage of the representatives of the Nations enrolled for the purpose of deliberating upon all subjects submitted to it, and, so far as they unanimously agreed, of establishing rules which should govern the conduct of the Nations concerned, and that the indirect, as well as the direct, influence of its action upon the world's affairs would be, so far as they did unanimously agree, of an important and effective character.

Prior to this date, it had been left to the discretion of each Nation, or of any two or more nations by agreement, to act at their own risk; and the signal merit of the Conference of 1899 is that by unanimous consent, it laid down rules for the conduct of all the Nations composing it, thereby declaring their common will, and that it established an international court which should

act by their united authority, and under a form of procedure to be followed, unless modified by special agreement of the parties.

Preliminarily, the signatory Powers did expressly agree to use their best efforts to insure the pacific settlement of international differences,[23] and in case of serious disagreement or conflict, before an appeal to arms, they agreed to have recourse, as far as circumstances allowed, to the good offices and mediation of one or more friendly powers.[24]

They also agreed that, independently of this recourse, the signatory Powers considered it useful that one or more powers, strangers to the dispute, should of their own initiative and as far as circumstances would allow, offer their good offices or mediation to the states at variance.[25]

It was also agreed that good offices and mediation, whether offered at the request of the parties at variance, or upon the initiative of powers who were strangers to the dispute, should have exclusively the character of advice and never have binding force, and that unless otherwise agreed, the acceptance of mediation should not have the effect of interrupting, delaying or hindering measures of preparation for war, and, if mediation occurred after the commencement of

hostilities, it should cause no interruption to the military operations in progress unless otherwise agreed.[26]

An entirely novel and singular recommendation was agreed upon for special mediation, by which, in case of serious differences endangering the peace, the states at variance should each choose another power to be its second, as it were, with the object of preventing the rupture of pacific relations, and that for the term of not exceeding thirty days, the states in conflict should cease from all direct communications upon the subject of the dispute, which is to be regarded as having been referred exclusively to the seconds, who shall use their best efforts to settle the controversy, and in the case of a definite rupture of pacific relations, these powers acting as seconds remain charged with the joint duty of taking advantage of every opportunity to restore peace.[27]

It will be observed how gradual and tentative and delicate all these agreements and recommendations were, and necessarily so, to secure the unanimous vote that was necessary for their adoption. Mediation had occurred before in many instances and had averted war, and in one case, at any rate, it had been successful after a proposal for arbitration had failed. It is stated

on the highest authority that "in 1844, when war between Spain and Morocco was threatened by reason of the frequent raids by the inhabitants of the Rif on the Spanish settlement of Ceuta, Spain declined arbitration on the ground that her rights were too clear for argument. But both she and Morocco subsequently accepted joint mediation at the hands of Great Britain and France."[28]

In the very spirit, also, of the recommendations made by the Conference of 1899, was the action of President Roosevelt, in bringing together the Russian and Japanese Governments and inducing them to appoint representatives to discuss terms of peace, at what appeared to be the very height of their terrible warfare. Whether it came within his constitutional functions as President has been a subject of much discussion, but if it is to be regarded as an exercise of individual power, it demonstrates the immense prestige of his name and personality at that time, and was, in my judgment, one of the most splendid and beneficent acts in his career. If the correspondence which passed between him and the contending parties should ever become public, it would, I think, appear that his action was most effective, not only in bringing the parties together to discuss the terms of peace, but also in reconciling their

minds to the terms of settlement actually agreed upon.[29]

The provision for special mediation, to which I have referred and likened to the appointment of seconds by parties meditating a duel under the old code of honor, was the suggestion of the Secretary of the American Delegation, Mr. Frederick W. Holls, who, however, disavowed the original conception of it, and gave the credit for it to Lord Russell of Killowen and previous authorities. This provision has been very highly commended, as restraining those personal and national passions and prejudices by which a growing controversy is rapidly embittered, and as meeting the difficulty which often occurs in arbitration of choosing a referee or umpire satisfactory to both parties. Mediation will doubtless be often resorted to in the case of future wars or threatenings of war, in imitation of the successful example set by President Roosevelt, and although it will in all cases be necessarily simply advisory and not binding, in the growing trend of public opinion for the prevention of unnecessary wars, the advice of a first-class power friendly to both the contesting or threatening powers will necessarily have great effect.

Why Italy, which, with Turkey, was a willing

party to the Conference of 1899 and to its agreements and recommendations, entered upon its predatory and apparently barbarous attack upon Turkey in the invasion and seizure and formal annexation of Tripoli, without any attempt at mediation or arbitration, and why it is that the other nations of Europe, who were also parties to the Conference and to its agreements and recommendations, refrained, if they did so, from offering good offices or mediation, are questions which at this distance and for lack of sufficient information, we are perhaps not able to judge, but which the nations themselves will have to answer at the bar of history.

Certainly, so far as made known by the Foreign Secretary of the Italian Government, in his published assignment of grievances, there were none which could not have been readily disposed of by arbitration, and we are yet to learn of any reasonable justification for this one-sided war. "Might makes right" is undoubtedly the motto upon which various nations have acted in appropriating different portions of the African coast, justifying their conduct by the so-called promotion of the cause of civilization, and this was doubtless the example which Italy pretended to follow. But the time is coming, and

surely not far distant, when the public opinion of the nations will cease to uphold or justify that rule. Turkey had been active in both of the Hague Conferences, and had been recognized as an equal power vested with complete and perfect nationality and equal sovereignty, and entitled to be treated as a civilized nation, and not to be classed with African aborigines as a fair prey for the spoiler. And certainly, if Turkey had had a powerful navy, this last and saddest incident in modern history would never have occurred.[30]

The avoidance of war and of the terrible war of which the two greatest nations of Europe today were on the very brink only in August 1911, is demonstration to my mind of the mighty pressure of public opinion, in favor of the peaceful settlement of international differences. It was that decent regard for the opinion of mankind, to which nations as well as men are bound to account for their conduct, that led one or both of the parties to the difference to make the concessions that were necessary to avoid a war, which would have deluged the world in blood. The event only shows how necessary it is, with all our might, by every possible means, to strengthen this same pressure of public opinion. Without knowing all the details, it may well be permitted

to us to inquire, whether there was anything in the disputes involved in that quarrel, which might not have been disposed of by mediation and arbitration.[31]

The institution by the Conference of Commissions of Inquiry to ascertain and report to the respective parties to a war or to a difference threatening war, the actual facts where there is a difference of opinion on the matter of fact, was a very important piece of work achieved by the Conference, the object being to facilitate the solution of the differences by elucidating the facts by means of an impartial and conscientious investigation. The plan recommended requires that "upon the inquiry, both sides shall be heard; that the powers in dispute agree to supply the International Commission of Inquiry, as fully as they may consider it possible, with all means and facilities necessary to enable it to arrive at a complete acquaintance and correct understanding of the facts in question;" that their report shall be signed by all the members of the Commission and "shall be limited to a statement of the facts, and shall in no way have the character of an arbitral award," but "leaves the powers in controversy freedom as to the effect to be given to such statement."[32]

At first blush, the institution of these Commissions of Inquiry would not seem to be of very great importance or effect, but, in reality, they are signally useful. When such a quarrel breaks out, or is already in progress, there immediately arises an acute and violent dispute about questions of fact. The ever present and ever vigilant representatives of the press of all nations take it up, and are very likely to take sides, and to attempt to determine in advance the facts of the case. The parties too, from their different points of view, may wholly mistake the actual facts of the situation, and in such a condition of things, if the facts can be ascertained by persons enjoying the mutual confidence of the parties to the dispute, and jointly appointed by them, the quarrel may be settled at once and altogether.

Take the case of the *Maine*, for instance, the destruction of which, by an explosion in the harbor of Havana, in the year 1898 was the occasion, but not the cause, of our war with Cuba. It is quite possible that that war, with all its momentous consequences, might have been avoided and peace preserved, if such a Commission of Inquiry, in which both parties joined, had been resorted to.

As it was, each party investigated the facts by itself on one-sided evidence, without hearing the

other side at all, and, of course, they came to directly opposite conclusions. But if, immediately upon the happening of the event, a Commission enjoying the mutual confidence of the parties, had taken the affair in hand, and ascertained, after hearing both parties and all the evidence that each could furnish, and had reported the actual facts, about which there now seems to be no room for dispute, a delay certainly would have been interposed, and time allowed for thought and for further diplomatic interchange of views. Quite possibly large concessions would have been made, which would have had the actual result of preventing the war altogether, and winning for Cuba the independence which Spain seems to have been at last ready to grant, rather than resort to the terrible consequences of war.[33]

But there is an actual illustration in a striking historical incident, which demonstrates the great utility of these Commissions of Inquiry recommended by this very Conference.

It will be remembered that while the terrible war between Russia and Japan was in progress, the Russian fleet, in making its way down the North Sea to the ultimate scene of conflict and of its own destruction, came unexpectedly upon a group of English fishing vessels, and mistaking

them for Japanese craft of war, it fired upon them and committed wholly unjustifiable damage and destruction. For the moment Great Britain seemed likely to be drawn into the conflict as a power seriously aggrieved, without warrant by one of the combatants, but Russia and Great Britain had warmly supported the convention arrived at by the Conference of 1899 for these Commissions of Inquiry. Without much difficulty they agreed upon such a Commission of Inquiry and joined not only in appointing its members, but in facilitating it by furnishing it with all possible knowledge on either side. The result was that in a short time, the Commission ascertained and determined the facts, and that the whole fault grew out of the mistake of those in command of the Russian fleet. They reported the facts and ascertained the damages, which were promptly satisfied by the Government of Russia.[34]

It is easy to imagine that similar instances will be constantly occurring in peace and in war, which can readily be arranged in this way without a resort to hostilities. Indeed, it was argued by the friends of the measure before the Committee of the Conference that had charge of working it out, that these Commissions would in the future probably be resorted to with far greater frequency

than arbitration itself. As was very wisely said by one of its advocates: "For practical purposes I expect that we shall use the international *Commissions d'Enquête* nine times for once that we shall use the permanent court of arbitration in any questions of serious importance. The difficulty of securing an impartial investigation of the dispute is, that when it is most needed, the disputants are in the worst possible mood to assent to it. They are distrustful, angry, and inclined to believe the worst of everybody and everything: to ask disputants in such a temper to agree to refer their dispute to an international court of investigation is to secure an almost certain refusal if you ask them at the same time to bind themselves to accept whatever the court or commission may decide."[35]

And it was therefore very wisely provided that the report of the Commission should be regarded as advisory and not binding upon either party. But a report of disinterested parties mutually selected making the facts clear, is very certain to have great weight in putting a stop to the quarrel, as was proved in the case of Great Britain and Russia.

And now we come to what is confessedly the greatest achievement of this First Conference at

The Hague, distinguishing it from all previous and subsequent conferences, namely, the actual establishment by the unanimous consent and approval of all the Nations engaged of a permanent International Court of Arbitration, to which all the signatory Powers might and probably would resort for a settlement of their differences which could not be adjusted by diplomatic negotiations, and were not of a character justifying or compelling war.

In approaching the question of the establishment of this Court, which had come to be regarded as the most important piece of work that the Conference could accomplish, the Nations attending unanimously committed themselves to certain articles of agreement on the general subject of arbitral justice, which were of great significance, as, for instance, that international arbitration has for its object the determination of controversies between states by judges of their own choice upon the basis of respect for law.[36]

Everybody knows that from time immemorial, arbitrations have not been particularly celebrated for respect for law or for proceedings upon the basis of such respect, but have been generally the vehicles of compromise and division of the matter in dispute between the parties on some arbi-

trary basis. But here, for the first time, it was unanimously agreed that respect for law must be fundamental in all international arbitration.

Again, it was declared that in questions of a judicial character and especially in questions regarding the interpretation or application of international treaties or conventions, arbitration is recognized by the signatory Powers as the most efficacious and, at the same time, the most equitable method of deciding controversies which have not been settled by diplomatic methods.[37] There had never before been any such formal and universal utterance as this concurred in by twenty-six Nations.

War had been, from the beginning, the normal condition of the world, interrupted by fitful intervals of peace, but now we are coming in sight of the new doctrine,—the American doctrine, as it may well be called—that peace is and shall be the normal condition of mankind, and that war is only an occasional incident interrupting and disturbing it, for now all nations agree that arbitration is the most efficacious and equitable method of deciding controversies which have not been capable of settlement by diplomatic methods.

Again, it was declared that the agreement of arbitration implies the obligation to submit in

good faith to the decision of the arbitral tribunal.[38] This agreement, unanimous like the others referred to, put in concrete and express form, in a convention solemnly agreed to by all the leading nations of the world, what had been before a floating and indefinite understanding among men, and finally disposed of the notion that if nations went into an arbitration, there was no sanction that made the award of the arbitrators binding, much less enforceable.

Indeed, in regard to the whole work of the Conference, it is still occasionally insisted that there is no sanction to the judgments of the permanent Court of Arbitration established by it; that there is no international army and navy, no international executive power to compel obedience to such decrees. But here we have what may be regarded as the common judgment of mankind expressed in the most solemn manner in which an international engagement between nations is capable of expression, that henceforth, in obedience to the public opinion of all nations, the contending parties shall submit in good faith to the decision of the arbitral tribunal.

The people and the Government of the United States had always been in favor of arbitration as a substitute for war, and had long advocated the

establishment of such a tribunal, and the proposition for its creation by the Conference was therefore hailed by their representatives as their chief object in coming to the Conference.[39] It must be also admitted that the Government of Great Britain had cordially shared this view, and one is not surprised, therefore, to learn that the honor of introducing the plan of such a court in the Conference happily belongs to the late Lord Pauncefote, who did so much for the maintenance of friendly relations between his own country and ours during his long term as Ambassador at Washington.[40]

Russia also proposed a plan and our own Delegation a third plan, but these two Powers agreed that the British plan should be the basis of the deliberations of the Conference.

The discussions which resulted in the perfecting of the plan that was finally adopted and found its place in the Final Act of the Conference, were most protracted and able and interesting. At one point, however, the whole scheme came near being shipwrecked, when the leading representative of Germany took the floor and opposed the whole idea of a permanent tribunal, as one to which Germany could never consent. His Government, he said, regarded it as an innovation of

a most radical character, and while it was a most generous project, it could not be realized without bearing with it great risks and even great dangers, which it was simple prudence to recognize, and that, in the opinion of his Government, the plan for a permanent international tribunal was at least premature. "Not yet, not yet," I think it may well be said, has been the general attitude of Germany on all such questions.

When the German objections against a Permanent Court of Arbitration in any form had brought the discussion to a halt, time was allowed for Professor Zorn, the distinguished delegate who had maintained the discussion for Germany, to go to Berlin and lay the whole matter before the Foreign Office, then under the direction of von Bülow, as Secretary of State and afterwards Imperial Chancellor, who seems to have been an ardent friend of arbitration. At any rate, the objection of Germany was waived upon what seems to have been an understanding that any effort to make the resort to arbitration or to the permanent court obligatory would not be insisted upon, and from the time of the return of Professor Zorn to The Hague with this result of his mission, Germany took a cordial and active part in the discussion, and voted with the rest for the establishment of the Court.

It is always necessary, in considering the work of this Conference, to remember the absolute necessity controlling it at every moment, in order to attain the end of absolute unanimity, to weigh every word in every article proposed, in order to meet any objection that might be interposed from any quarter, and that this was the first attempt at the establishment of such a tribunal. In view of these difficulties, the result obtained was a marvelous success, as it led the way for great and constant advances in the future, and pointed out the road in which future conferences, as well as future diplomacy, should follow.

It was only on the 26th of May that Lord Pauncefote presented his proposition, and on the 29th of July the Conference ended by the formal signing of the final act, by which the Court was established.

Although entitled "The Permanent Court of Arbitration," it was permanent only in one sense, and that was in the composition of the jurists, from the list of whom the arbitrators or judges who were to act in each case as it arose should be selected by the parties.[41] There was also established a Permanent International Bureau at The Hague to serve as the record office for the Court, be the medium of all communications relating to it, and have the custody of its

archives and the conduct of all administrative business.[42] Each of the signatory Powers was to select, and they did select, not more than four persons of recognized competence in questions of international law, enjoying the highest moral reputation and disposed to accept the duties of arbitrators. The persons thus selected were enrolled as members of the Court, and appointed for a term of six years, to be succeeded by other appointments in case of death or resignation.[43] The jurisdiction of this Court was declared to extend to all cases of arbitration, unless there should be an agreement between the parties for the establishment of a special tribunal.[44] The sessions were to be held at The Hague; in case of necessity, the place of session might be changed by the Court only with the assent of the parties,[45] elaborate rules of arbitral procedure were also agreed upon for proceedings in the Court.[46]

A permanent Administrative Council was also established to supervise the organization of the Bureau, which should remain under the direction and control of this Council, to be composed of the diplomatic representatives of the signatory Powers accredited to The Hague.[47]

I have said that the indirect results of the Conference were quite as important as the direct

results embodied in the Final Act, and Mr. White well sums it up, so far as regards its effect upon the law of nations, when he says:

"There is also another gain,—incidental, but of real and permanent value; and this is the inevitable development of the law of nations by the decisions of such a Court of Arbitration composed of the most eminent jurists from all countries. Thus far it has been evolved from the writings of scholars often conflicting, from the decisions of national courts biased by local patriotism, from the practices of various Powers, on land and sea, more in obedience to their interests than to their sense of justice; but now we may hope for the growth of a great body of international law under the best conditions possible, and ever more and more in obedience to the great impulse given by Grotius in the direction of right reason and mercy."[48]

There have already been many resorts by Nations, who found themselves in dispute, ourselves among the foremost, to this Permanent Court, whose administration of justice has been most satisfactory, and tends directly in the direction of the evolution of true international law, as prophesied by Mr. White.[49] But there is another indirect result of the establishment of the Court accom-

panied, as it was, by the common agreement of all the Nations concerned in creating it, that arbitration was the best and most expedient method of deciding international controversies. The result has been that since the adjournment of the Conference, arbitrations and treaties of arbitration, almost without number, have occurred between different Nations who were parties to it, and there has been an almost universal concensus of opinion, not only among jurists and statesmen, but among intelligent men of all countries, that arbitration should be resorted to before a resort to force is tried.

More than one hundred and forty-four standing arbitration treaties have been concluded since the First Hague Conference.[50] Besides these, there have been concluded within recent years a large number of conventions, which, although they have not for their direct object the assuring of peace, yet tend very strongly to contract the area of possible difficulties. An illustration of conventions of this character is to be found in the Postal Union,[51] of which type there are already more than forty-five in existence. In addition to the standing arbitration treaties and the conventions similar in character to the Postal Union, there have been, in the course of the century before the

First Hague Conference and since its adjournment, hundreds of arbitrations between different nations for the peaceful settlement of disputes.[52]

If we look back upon the practical progress made by the Peace movement during the twenty-five years ending with the Conference of 1899, we find that an astonishing change has taken place in the attitude of public men, as well as private citizens, throughout the world on the subject. Twenty years ago the Peace movement and its advocates were held in very light esteem, and were more frequently the object of ridicule than of any serious consideration, but they have certainly had a substantial effect upon public opinion, which, in the end, must govern all the great transactions of the world. We may safely compare its progress with that of other great moral reforms which have at first been received with contempt, but which in time have mastered the national conscience, and, if I may say so, the international conscience as well.

It was in 1789 that Wilberforce made his admirable speech in the House of Commons, introducing resolutions which were intended as a basis for the future abolition of the slave trade, that in 1807, was put an end to, so far as the British dominions were concerned. The Constitution of

the United States had recognized and permitted this horrible traffic until January, 1808. At the Congress of Vienna in 1814, the principle was acknowledged that the slave trade should be abolished as soon as possible, but it was left for separate negotiation between the Powers as to the limit of time within which this should take place. By the treaty of Ghent in 1814, the United States and England mutually bound themselves to do all in their power to extinguish the traffic, and by the Ashburton treaty in 1842, Great Britain and the United States actually made provision for the joint maintenance of squadrons on the west coast of Africa for its suppression, each Nation to maintain a squadron of at least eighty guns for that purpose, and the two Governments agreed to unite in an effort to persuade other Powers to close all slave markets within their territories.

Thus, in the short space of fifty years, that great moral reform, sustained by the universal public conscience, was brought about and the infamous traffic, which, at the beginning of that period, had been generally tolerated, was pronounced, by the common judgment of the world, in law, as it always had been in fact, a crime of the first magnitude.

So, as to domestic slavery, the life of a single man, William Lloyd Garrison, who died at the age of seventy-four, was long enough to bring about its complete and final abolition in the United States. It was not until January, 1831, that he started, without a dollar of capital and without a single subscriber, the publication of "The Liberator," bearing the motto: "Our country is the world; our countrymen are mankind." Amid the almost universal execration which was showered upon him in the North as well as the South, he persisted in his demand for immediate emancipation. Even in Boston in 1835, he was dragged by the mob through the streets with a rope around his body, his life being saved with great difficulty by lodging him in jail. Only twenty-eight years later, President Lincoln issued his proclamation of emancipation, which is universally regarded as the greatest act in his wonderful career.

Now, everybody knows that war, for the settlement of international disputes which might be composed by arbitration, is as barbarous and cruel and wicked as the slave trade and slavery ever were, and, like them, it presses with the severest hardships upon the lowest ranks of the community, for, in every great war, it is the poor and the laboring classes that suffer most from its

burdens and oppressions, and even in peace the crushing expense of the armies and navies falls most heavily upon them.

Thus, it seems to me that there is every reason for encouragement in the progress made for the prevention and abolition of war as measures essential to our complete civilization. We do not delude ourselves with the idea that there will be no more wars, or that talking or conferring or arbitrating will put an end to them. Righteous and necessary wars there may yet be, but only righteous and necessary on one side, like our own struggle for Independence in 1776, and the life and death contest of 1861 for the preservation of the Union and the extirpation of Slavery.

But the work for Peace is going on well, the conscience of the world is thoroughly aroused and determined, and perhaps thousands now living will see the day when war, as a means of settling international disputes, will be as generally condemned as the duel and slavery and the slave trade are to-day. Perhaps this also is another dream! But who can tell?

"Blind unbelief is sure to err,
And scan His work in vain.
God is his own interpreter
And He will make it plain."

II

THE SECOND CONFERENCE

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Scarcely had the ink dried on the pens of the delegates who signed the Final Act of the Conference of 1899, when the terrible war broke out between Great Britain and the Transvaal, which latter country had not been admitted to the Conference. We may not discuss here the merits of that protracted and destructive conflict, which ended, so far as can now be discerned, in the accomplishment by Great Britain of the object of the war,—the establishment of her complete supremacy in South Africa.

Many things have since happened in that direction which may throw doubts upon the permanence of British supremacy there. It is true that on the 1st of September, 1900, the Transvaal was annexed to the British Empire and the Boers forced to accept British sovereignty; new letters patent instituting self-government in the Transvaal were issued on the 12th of September, 1906, in pursuance of a wise policy on the part of Great Britain. But history is not made in a day or a decade. The union of the South African

Republics, a federation of practically free states under the sovereignty of Great Britain, appears to be working most satisfactorily to both sides, but it appears inevitable that, as time goes on, the predominance of the Dutch element in South Africa will become more and more marked and powerful, and, in view of the established policy of Great Britain not to attempt to hold her colonies by force against their will, the time may come when the South African Republics, like our American colonies, may set up for themselves and declare their independence. At any rate, permanent peace seems, for the present, established in that quarter of the world.

But the still more terrible war in 1904, between Russia and Japan, which seems, in its outcome, to have had for its ultimate result, if not for its original object, the division of a great province of China between those two powers, was even a more serious disappointment to the friends of peace throughout the world than the Transvaal war had been.

These two nations had been members of the First Hague Conference, and were fully committed to its peaceful policies of mediation and arbitration as a means of settling international disputes, beyond the power of diplomacy to ad-

just. But nevertheless, the exhausting and destructive progress of the conflict, which at last brought both parties, in a state of exhaustion and in despair of settling their dispute by war, to the treaty of peace at Portsmouth, had demonstrated the truth of the prophecies of the Czar Nicholas II himself in his famous rescript of August 24, 1898, as to the fatal effects of great and growing armaments upon the nations who indulged in them.

The treaty of Portsmouth was signed on the 5th of September, 1905, and although it did provide for the evacuation of Manchuria by the contracting parties, and for the restoration entirely and completely to China of her exclusive administration of all portions of Manchuria then in the occupation or under the control of Japanese or Russian troops, except the leased territory, and although Japan and Russia engaged reciprocally not to obstruct any general measures common to all countries which China might take for the development of the commerce and industry of Manchuria, these promises were not self-executing, and since that day China seems to have had a very subordinate influence in that district, which was the seat of the conflict.

It will be remembered that the First Peace Conference had assumed the certainty of another

Conference in the not distant future, and had referred to such a future Conference some of the most important questions, including the limitation of armaments, and the immunity of private property on the high seas, the rights and duties of neutrals, and the bombardments of ports, towns and villages by a naval force, but had not conferred upon any power the exclusive duty of calling such a Conference.[53]

Accordingly, in October, 1904, by direction of President Roosevelt, who was inspired by the appeal of the Inter-Parliamentary Union held in St. Louis at the centennial celebration of the Louisiana Purchase, the Secretary of State, the late John Hay, addressed a circular note dated October 21, 1904, to all signatory Powers of 1899, suggesting the calling of the Second Conference at an early day. The President's overture was favorably received, but the reply of Russia deferred the participation of that Government until the cessation of hostilities in the far East, while Japan made the reservation that no action should be taken by the Conference relative to the war.[54]

The war having happily ended, the Emperor of Russia, as the initiator of the First Conference, conveyed to the President the suggestion that Russia was ready to assume the responsibility of

summoning the Second Conference, to which suggestion the President, in the true spirit of chivalry yielded.[55]

In one respect, this courteous concession was unfortunate, because it resulted in continuing, through the Second Conference, the predominant influence which had naturally been conceded to Russia in the First. A true World's Conference ought not to be under the control or even the leadership of any one nation, but should reflect the common spirit of at least the principal nations of the world.

Through the sagacity and tact of Secretary Root, all the nations of Central and South America were included in the call for the Second Conference, instead of only the United States and Mexico, as had been before, and thus the Second Conference, consisting of the delegates from forty-four independent nations, instead of twenty-six, was in reality the first World's Conference that had ever been held.[56]

The letter of instructions of Secretary Root to us who were entrusted with the representation of the nation at this Conference,[57] is one of the most remarkable state papers that has ever been issued, remarkable alike for its lofty spirit of patriotism and for its noble views of the spirit

which should actuate all nations coming to such a conference.[58] "In the discussion upon every question," he wrote, "it is important to remember that the object of the Conference is agreement, and not compulsion. If such conferences are to be made occasions for trying to force nations into positions which they consider against their interests, the powers cannot be expected to send representatives to them. It is important, also that the agreements reached shall be genuine and not reluctant. Otherwise they will inevitably fail to receive approval when submitted for the ratification of the powers represented. Comparison of views and frank and considerate explanation and discussion may frequently resolve doubts, obviate difficulties, and lead to real agreement upon matters which at the outset have appeared insurmountable. It is not wise, however, to carry this process to the point of irritation. After reasonable discussion, if no agreement is reached, it is better to lay the subject aside, or refer it to some future conference in the hope that intermediate consideration may dispose of the objections."

"The immediate results of such a conference must always be limited to a small part of the field which the more sanguine have hoped to see

covered; but each successive conference will make the positions reached in the preceding conference its point of departure, and will bring to the consideration of further advances towards international agreement, opinions affected by the acceptance and application of the previous agreements. Each conference will inevitably make further progress and, by successive steps, results may be accomplished which have formerly appeared impossible."

"You should keep always in mind," he further says, "the promotion of this continuous process through which the progressive development of international justice and peace may be carried on; and you should regard the work of the Second Conference, not merely with reference to the definite results to be reached in that Conference, but also with reference to the foundations which may be laid for further results in future conferences. It may well be that among the most valuable services rendered to civilization by this Second Conference will be found the progress made in matters upon which the delegates reached no definite agreement."

It was in this spirit that we went to The Hague and pressed upon the attention of our colleagues from the other forty-three nations the highly con-

structive and advanced measures which we were instructed to propose. And it will be found, I think, that the results of our labors, indirect as well as direct, measured by the criterion laid down by Mr. Root, will prove to have been of very great value.

As before, the organization of the Conference was practically in the hands of Russia. Her First Delegate was made President of the Conference and it was he who, after consulting with the representatives of other nations, appointed the presidents of the several Commissions among which the business of the Conference was distributed, and it was he, a skilled and experienced diplomatist, who, as President of the Conference, was authorized to appear and take part in the proceedings of any committee or sub-committee, and who, on all critical and important occasions, availed himself of that privilege. Besides this, as before, the State of Montenegro made the delegates of Russia its own, and thus Russia had two votes on every question that came up, instead of the one of every other nation.

The composition of the Conference was very remarkable. It embraced some twenty-five of the members of the First Conference, who thus were thoroughly conversant with its history, and in-

cluded many distinguished jurists from other nations, who greatly contributed to its composite force and influence, among whom the different states of South America made valuable contributions.

The Conference met at The Hague on the 15th of June, 1907, and continued in session, almost without intermission, until the 18th of October, when the Final Act was ready for signature.

As our numbers were too large to find convenient accommodation in the classical "House in the Woods" where the First Conference was held, our sessions took place in The Binnenhof, in the celebrated Hall of the Knights, where we found ample room. The Binnenhof was built in the 13th century by William the Second, Count of Holland, King of the Romans, and is at present used by the States General in joint session.

For some mysterious reason which I cannot explain, but which probably grew out of the then very recent political upheaval in Great Britain, by which the party that had been in power during the First Conference had become his Majesty's opposition, consisting of a powerless minority, the English press, particularly the conservative press, was very much disinclined to favor the work of the Conference. The London *Times,*

which continued at that time to be the great organ of British public opinion, especially on foreign affairs, was especially hostile to the whole performance, constantly uttering severe criticisms upon what was done or not done, and finally openly setting us down as largely composed of a group of second-class diplomatists, who were trying to see how we could best dupe each other. To take its own words, on the 7th of October, it said:

"They, the members, have negotiated and compromised and tried to dupe each other and resorted to all the little tricks and devices of second-class diplomacy;" and, again, on the 19th of October, at the close of our deliberations, it said, in plain English:

"The Conference was a sham and has brought forth a progeny of shams, because it was founded on a sham. We do not believe that any progress whatever in the cause of peace, or in the mitigation of the evils of war, can be accomplished by a repetition of the strange and humiliating performance which has just ended."

But, in truth, the Conference was composed of as able and earnest a body of public men as ever had assembled for any similar purpose. Its deliberations were conducted in the spirit of true

conciliation, with uniform dignity, and without resort to any of the low arts suggested by the *Times*.

The work which it accomplished was of the greatest utility for the advancement of the cause of arbitration and peace, and the value of that work, like that of the First Conference, has, in the lapse of years, come to be regarded as greater and greater, in the estimation of all those who believe that some better means than war can be found for the settlement of international disputes. So that the comments of the London *Times* may be regarded as one of those flagrant political libels, of which even the greatest newspapers are sometimes guilty.

Not only were the Great Powers so-called well represented, but the small powers were represented in many cases by very able and interesting men. It met at a moment of profound and universal peace which was a good augury for its work, and it was the first time in the history of the world that there had been a conference of all the civilized nations that composed it. One would have expected, in such an assembly, gathered from all parts of the earth, composed of all nations with their various grades of civilization, to find more or less rough customers, but in truth

it was not so. Even the smallest nations were represented by cultivated, educated, able men, who took their fair share in the earnest work of the Conference.

The development of international law only proceeds step by step very gradually. It has taken several hundred years to bring it to its present imperfect and really undeveloped condition, and it will probably take a good many more conferences, and perhaps a hundred years more, before a body of international law is developed, to which all the nations of the earth will give their assent.

But the only just way to measure the work that was done, is, as it seems to me, in regard to each question, to consider the position in which it stood when the Conference came together and the position which it occupied when the work of the Conference was finished. Measured by that standard, I do not hesitate to say that on several very important questions, there were advances made, and substantial progress which is not to be undone, and which will, by and by, secure for each of the propositions which were advocated, whether they were finally adopted or not, an assured place in future history.

To show this, I can do no better than to take

up, one by one, the projects that were considered, those that were adopted, and three or four of those that were left for future and further consideration by the nations, either by diplomatic interchange of views or by future conference, the latter being of equal importance with the former, because, as Mr. Root well said, in the extract from his instructions already quoted, no single Conference can be expected to settle every question brought before it, but the discussion and the action taken may open the way for future conferences or diplomatic negotiations, to carry to a still further advance and perhaps finally to complete the work.

One most interesting proposition that was adopted, without a dissenting voice, after long discussion and deliberation, was worth all the trouble and cost of the Conference. I mean the American proposition which resulted in the convention by which the contracting powers agree not to have recourse to armed force for the recovery of contract debts claimed from the government of one country by the government of another country as being due to its nationals, but that this agreement is not applicable when the debtor state refuses or neglects to reply to an offer of arbitration, or, after accepting the offer,

of arbitration, prevents any compromise from being agreed upon, or, after the arbitration, fails to submit to the award.[59]

Here was a final treaty, by which the nations bound themselves, each to the other and to all the world, not to resort to force for the collection of contract debts due from one nation to the citizens of another nation, without first exhausting the resources of arbitration. Prior to this time, it had been deemed permissible, in international law, where one nation espoused the claims of its citizens against a debtor nation, to resort to force if the claims, after the exhaustion of diplomatic efforts, were disavowed or repudiated, or even if only there was a refusal from inability to pay. Bombardments, seizure of revenues and occupation of territory had been employed to compel payment,—a most harsh and severe method of collection, which constantly imperiled the peace of the world. It will also be noted that although this was an American project, inspired, no doubt, by the desire to protect the weaker states of Central and South America, there is no specific reference to them or to any particular country in the convention as adopted. It can equally avail for the protection of every nation, great or small, but particularly of the smaller

nations who are more often in the predicament of inability to respond promptly to their obligations to the citizens of other nations for money loaned or advanced.

Here was a case, and perhaps the first case on record, of a form of compulsory arbitration, agreed to by all the nations of the earth except five, who abstained from voting. The five states that abstained from voting were Belgium, Roumania, Sweden, Switzerland and Venezuela.[60] Venezuela, which had given the world more trouble in this matter than all other states combined, was willing to accept the benefit of the renunciation of force provided by the first article of the convention, but was unwilling to bind itself to arbitrate, and as the vote was taken upon the whole article, it refused to sign the convention.

Certainly this convention did greatly advance the cause of arbitration, and actually committed the Nations of the world to resort to it before attempting force. The question had been a very serious source of controversy for many years. Sometimes nations had almost come to blows, and very bitter feelings had been excited by a resort to force by creditor nations, even in the case of inability to pay, and the first creditor nation that

grabbed the customs or territory or other resources of a debtor nation, was deemed to have the preference in any solution or settlement that might ensue.

The proposition, it will be observed, as adopted, has no special or express bearing upon our Monroe Doctrine, but it is an approach to and recognition by the Nations of the law of "hands off" as to weak nations on the part of strong ones, until they have had a chance for the intervention of arbitration. The contrary rule had been the most threatening form of assault upon the Monroe Doctrine which had theretofore taken place.

The Monroe Doctrine is our peculiar, favored doctrine, that there shall be no occupation of American soil by foreign nations and no attempt on their part to extend their system to any portion of this hemisphere. But it has never been assented to, that I know of, in a definite way, as by treaty, by any of the nations, great or small. It is treated with very great politeness, and more and more so as we advance in strength, and many wise jurists are of the opinion that its maintenance in the future, especially after the Panama Canal shall have been opened, will depend wholly upon the strength of our arms to maintain and enforce it. For one, I am decid-

edly of that opinion, and ardent as is my advocacy of peace, I believe that it would be the height of folly for us to expect to maintain peace without the maintenance of an adequate navy, ready and able, in any emergency, to resist any attack upon our cherished national doctrine.

President Roosevelt very justly said that the Monroe Doctrine will keep good as long as we are strong enough to make it good, and President Taft is wisely urging the steady increase in the number of our battleships, with the necessities of the immediate future in view. As our power grows and our navy grows, the Doctrine will be treated with greater politeness and deference by foreign nations, who, although they may not formally agree to it, will not disregard it.

I remember that even as long ago as when Lord Salisbury was Prime Minister and Foreign Secretary, he spoke of it with the greatest respect, and the representatives of other governments will regard it in like manner if only we do our duty, and manifest our power to maintain it.

It tends very much, of course, to keep the peace of the world, that in this proposition that I have now referred to, we have all the nations agreeing, by treaty, that in the case of contractual debts, claimed to be due by one nation to the

citizens of another, force shall not be resorted to until arbitration has been tried, and that certainly was a great step forward towards the establishment of a fixed and universal rule of international law on a most important subject, and in itself is an important barrier in the defense of the Monroe Doctrine.

Our success under this head is mainly—and I might say almost exclusively—due to the earnestness, tact and skill of General Horace Porter, my fellow-ambassador and delegate at the Conference, to whom its conduct was committed by the Secretary of State with the full concurrence of the entire delegation.[61] From the moment of its introduction until its final adoption, General Porter, by night and by day, in season and out of season, in public and in private, devoted his entire energies to carrying this important measure. It was a work of the greatest difficulty and delicacy, because it ran counter to the settled convictions and practices of many of the nations, and to the general objections to obligatory arbitration in any form, and also because the friends of the principle of the measure were much divided in their views. To reconcile these differences required all the ability of a most experienced diplomatist, and as every word in the convention, as

finally adopted, was subjected to close criticism before the actual phraseology finally arrived at could be adopted, the wonder is that he was able to succeed at all.

This is one great and direct step forward, which I claim has resulted from the work of the Second Conference, in spite of all the efforts of its critics to belittle it.

Another and still more important one was the establishment of an International Court of Appeal in Prize Causes. This was another great measure which received the assent of the delegates of thirty-seven nations. Six nations abstained from voting and only one nation, Brazil, voted against it. This assent was subject, of course, to the ratification of the nations they represented.[62] This question had been one of long standing dispute and controversy. When war broke out, it had always been the practice for each of the combatants to establish or resort to national prize courts of its own, which necessarily passed upon the validity of every capture made by its forces and brought in for adjudication. According to the weakness of human nature, from which even courts are not exempt, it generally happened that the validity of the capture, being adjudged only by one side, was

sustained by the national court, and this was final, so far as the law controlled. If the decision involved the disposition of a vast amount of property, or was one which seemed to violate the rules of natural justice and equity, diplomacy went to work to obtain reparation for the neutral, whose property had been thus summarily disposed of. And sometimes, but only rarely, joint commissions appointed by the two nations had reversed the judgment of condemnation by the national court of the belligerent, but the latter was not bound to join in such a commission. The desideratum was to create a tribunal of international sanction, which should, in an independent spirit, unbiased by the national interests and passions of the contending parties, finally adjudge the case on the general principles of international law and in the light of established rules of justice and equity.

This was one of the most interesting subjects brought before us, and if our action upon it shall be ratified by the governments whose delegates voted for it, which is altogether probable, the result will be that we shall have, for the first time in history, an international court, before which the aggrieved party can bring its adversary compulsorily for the final settlement of a certain class of disputed questions between them. The

project was brought forward simultaneously by Germany and Great Britain, whose representatives were both very zealous for its accomplishment, but evidently from different motives and from opposite points of view. Great Britain, with her mighty navy riding on all the oceans, upon the outbreak of a war, might seize and condemn neutral property, and Germany, with its much smaller navy at that time, might find itself in the position of a neutral power whose property was seized by one or the other of the contestants.

We gave our general assent to the proposition at the outset, and waited to hear what would result from the differences that manifestly existed between the two nations that had brought the project forward. They both agreed that there ought to be an appeal from the prize adjudication of national courts, to an international tribunal of final authority, which should substitute the rules of international law or the general principles of justice for the selfish adjudication of the national courts, by whose decisions the owners of neutral property had suffered much from belligerents engaged in hot and active conflict, in which the neutral had no interest. I think that no nation at one time suffered more seriously than

we did from this unhappy condition of the law as to neutral property. Nobody can ever forget the terrible depredations which were committed upon neutral commerce in the early part of the last century, when war existed between Great Britain and France, and we were the victims of very serious spoliation by the capture, by both sides, of our innocent and unoffending neutral ships and cargoes. Expecting, as we did, that the United States, in the future, as in the past, in the contests of nations, would generally be neutral, we advocated the Court from that point of view.

It appeared manifest from the outset that there were very serious differences between the German and the English delegations in their efforts to agree upon the scheme for the establishment of the Court which they both desired in principle. These differences reached, at one time, an impasse which threatened to defeat the measure altogether, as Sir Edward Fry, the chief delegate of Great Britain, announced that he could make no further argument; that argument on the part of Great Britain had done all that it could, and that there were three or four serious points between them unsettled.

It was at this point that our delegation was able, in the spirit of harmony and conciliation, to

intervene successfully and save the measure from final defeat.[63] Great Britain insisted that the court should be a permanent one, while Germany wished to have it called into existence at the outbreak of every war and for the purposes of that war only. Germany insisted that since an appeal to an international court was the object in view, such an appeal should be from the court of first instance in the national tribunals. England, priding herself so justly upon the great record which Lord Stowell and others of the Great Admiralty and Prize Judges of England had made, and which had largely settled the law of capture and prize, was very desirous that it should be from the court of last resort only. Again, one of the contestants was in favor of the appeal being taken not by the owner of the captured property, but by the nation to whom such owner belonged, and thus three serious points of difference had arisen between them which seemed for the time being incapable of solution, and there was still another which involved the composition of the proposed Court. England, with that natural instinct for law that the Anglo-Saxon races possess, insisted that the judges of the international court should all be pure jurists. Germany, on the other hand, stoutly contended that the court, having to do

with purely naval matters, should be made up, in part, at any rate, of admirals, they believing that on a question of prizes, admirals would be the wisest and the safest judges.

On the first point of difference we sided with Great Britain and persuaded Germany to yield the matter and to establish the court as a permanent court. On the next question, from which national court an appeal to the international court should be taken, we suggested that it should be from the court not of first instance, but of second instance in the national tribunals. This would secure the action of our own Supreme Court, which we thought would probably be satisfactory without an appeal from either side, and would not hazard the possibility of what might prove to be very unpopular in America, an appeal on any terms or conditions which could dispense with a decision by the Supreme Court of the United States, and after very close and active discussion, our conciliatory proposition was adopted by both the contending parties.

Then, as to whether the owner of the property captured, or his government, should have the right to appeal, our suggestion was that the appeal should be taken by the owner of the property under general regulations established by his gov-

ernment, and that middle course was adopted by the contestants.

Finally, as to the composition of the Court, our prejudices, our judgment, our instructions, were all in favor of the British view, that any court which should be created should be a real court, composed of jurists learned in the law, and at the same time we recognized the German prejudice in favor of admirals experienced in naval warfare as an element of great utility in the composition of the court. We therefore proposed that although admirals should not be made judges, although the judges should always be lawyers trained and educated in the principles of law and equity, nevertheless, somewhat after the fashion of the English Court of Admiralty, which brings in the Trinity Masters for advice, no case should be decided without a naval representative of each of the contending parties being present to advise the court, and although they should occupy seats a little lower than the justices, no cases should be decided until the naval representatives had been fully heard and their views completely understood and considered. On our insistence, the German representatives accepted this view, and Germany, Great Britain, the United States and France agreed jointly to be sponsors for the measure, and

in this form it was adopted by the Conference and sent to the Nations for ratification.[64]

It was well understood that eight great Nations were more interested in questions of war and prize than the other nations, and as there were forty-four Nations in all, and it was not possible for each to have a judge all the time, the matter was adjusted by creating a court of fifteen members, of whom nine should be a quorum; the eight Nations which were more interested in questions of war and prize than the others were each to have one judge all the time; and forming the court for a series of twelve years, each of the other Nations, according to the interest that it would probably have in the business of the court, its population, its wealth, its activity, its commerce, was to have a judge appointed by itself, but serving only for a graded number of years, from eleven years down to one year, as in the case of Panama.

And that I consider to be another accomplished fact, another great step forward towards the creation of a real international law binding upon all Nations, and to the practical advancement of international peace.

As was to be expected, a question arose with our own government as to the expediency, if not

as to the constitutionality, of allowing an appeal to any foreign or international tribunal from any decision of the Supreme Court of the United States. This question Mr. Knox has very wisely met and adjusted by ratifying, with the reservation that the action of the International Prize Court, instead of taking the form of a direct appeal from the Supreme Court of the United States, should be limited to the determination of a claim for damages for the owner of the injured property against the United States or the captor.[65] Other nations have also made reservations, England, for instance, withholding her approval until the international maritime law which the court would administer should be settled by a conference of the maritime nations which she called in London, and which did establish definite rules of law. The rules are still a subject of contention between the two Houses of Parliament, the bill approving the declaration of London having been thrown out by the House of Lords, with the assurance that it is to be again introduced in the Commons during the present session of Parliament.[66] While the subject of ratification of this very important convention is still pending, I think there is no doubt that the court will be established at no distant day, and will stand as a monument

of the advancing progress of civilization and the cause of peace.

But the success of conferences is to be weighed and measured, not simply by their direct action, which commands the approval of all the Nations, but also, and perhaps even more, by the progress they make in questions still left undecided and subject to further action by diplomacy or by future conference. And here we claim for the Second Conference great distinction, and for the work of our delegation under the instructions of Secretary Root, a very leading part in the advocacy of all the most constructive and progressive measures that were brought forward for consideration. We could not, of course, as in the Parliament or Congress, carry questions by force of the majority. That would soon put an end to all conferences, which meet, as Franklin said in the Federal Convention when they began their discussions, "to confer and not to contend."

And so I wish to speak briefly of three or four other matters that were proposed and were not adopted by the Conference, but in which great progress was made.

We went instructed by our Government to maintain, to the best of our ability, our old claim

for the immunity of private property at sea, that is, of private and unoffending property, not contraband, even in enemies' ships at sea in time of war. Franklin had endeavored to have this asserted as a substantial clause in the treaty of peace between us and Great Britain in 1783, placing private property at sea in the same position of immunity as private property on the land; that except in cases of contraband, it should not be liable to capture, which was a very important move in the direction of saving inoffensive and unoffending commerce from spoliation and destruction in case of war, and very much for the benefit of the world at large, to make commerce free always from interruption by war any further than was absolutely necessary.

Time and again our government had pressed it during the intervening hundred years between Franklin's death and the meeting of the Conference. They had proposed it at the First Conference, from which it was absolutely excluded, although Dr. White succeeded in putting on file a very powerful memorial in support of it, and made a most effective address in its behalf.[67] The First Conference would not listen to it; they said it was not within the programme, but recommended the careful study of it for consideration

of the next Conference, where it properly came up. We had it inserted, by Franklin himself, in the treaty of 1785 with Prussia, and once we had it in a treaty with Italy, and several times other nations, imitating that example, when war broke out between them, agreed, at the outbreak, that there should be such immunity, but no substantial progress had been made in the way of its recognition as an international doctrine when our Conference met.

Of course, most of the great nations opposed it. Germany was the only one of the great fighting nations that voted affirmatively with us, but it was very respectfully considered and fully discussed, and after several weeks, in which it came up from time to time, almost two-thirds of the nations voting, that is, by a vote of twenty-one to eleven, recorded their votes in favor of the establishment of such immunity.[68] It was not found possible, however, in the face of great commercial nations that opposed it, and which were likely at any time to be engaged in war, to press it further. Our orders were not to press anything to the point of irritation, but if we found it impossible to carry a matter through at this Conference, to carry it as far as we could and then drop it, leaving it for further consideration, in the hope

that by and by, with the growing sense of international justice, it would be accepted by the nations.[69]

So there it stands for these twenty-one Nations who supported us to enter into such an agreement among themselves, or in case of war breaking out between any of them, to make a special agreement for the immunity, or for action by the next Conference to be held in 1915.

So there again, very positive progress was made. We stand no longer where we did at the beginning of the Conference, nobody assenting to it but ourselves, but twenty other nations of greater or less importance pledged to the proposition which would make so strongly for peace and for the limitation of armaments.

We labored also very earnestly for the establishment of a general court of arbitration, of a permanent court, meeting regularly and not to be called together for each specific case, as was provided by the First Conference, which had merely established, under the name of a Permanent Court, a list of jurors or judges who might be selected by any nations that should choose so to do.

This was a question that interested all the nations alike, and a general agreement was

reached first, that there ought to be such a court, and whereas, in the First Conference the idea that there could be such a court was abandoned as impracticable, and no action was taken beyond what I have already, in my former lecture, described, the Second Conference voted that such a court of arbitration ought to be established, and we framed by general consent a scheme for the functions, the organization and the procedure of the court, to which substantially all agreed.

The failure came when the subject of the method of appointing or creating judges of the court was reached. Almost all the larger nations considered that what had been agreed to in this respect, in the creation of the prize court, ought to be adopted, and that there should be a similar distribution of judges, according to the interest and business that the several nations would probably bring to the court. Well, there we hit upon an obstacle which there was no overcoming. We were forty-four nations assembled. Central and South America constituted twenty-one nations of all that took part in the Second Conference, and they claimed and asserted that sovereignty was sovereignty, and that all nations are absolutely equal, and although they had assented unanimously, with the exception of Brazil, to the formation of the

international court of appeal in prize, on the terms I have mentioned, they took a stand on this subject and insisted that there should be nothing short of absolute equality in the appointment of judges.

As there could not be a court of forty-four judges, and as Russia and Germany, Great Britain and France and the United States could not agree that every nation was as big as every other, as was claimed by some of these small nations,—that Panama was in all respects the equal of Great Britain, and Luxemburg the equal of Germany,—no agreement could be reached. We proposed various schemes, being very earnest, in the hope of establishing this court.

We even declared our willingness to have an election of judges by all the nations, each voting for a limited number. We thought we could take our chances of being represented in that court, and were willing to consent to an election, even though we should be left out, because the whole scheme proceeded upon the idea that nobody was compelled to come before the proposed court. Any nations preferring it could resort to other means of settling their international differences, and especially to the tribunal which is now in existence at The Hague, consisting of a list of referees from among whom the parties may select

judges, two or three or five as they may agree, but not in reality a permanent court at all. This new tribunal, if created, was to continue to exist by the side of the existing Permanent Court.[70]

This difference as to the mode of selecting judges could not be settled by the Conference. It was therefore voted that there ought to be such a court; that the scheme that we had established for its powers, procedure and organization, its sessions and the general theory of law that should be applied to it, was accepted; and it was referred to the nations to agree, in the best manner they could, upon the number of judges, and the mode of their selection, and that as soon as that was done, the court should be established with the constitution that we had framed for it. And this also is a proposition which, having advanced so far, is likely to be favorably settled by diplomatic intercourse, or not later than the meeting of the next Conference.[71]

Our instructions had also been to press for a general arbitration agreement substantially in the form of those arbitration agreements which we made with eleven nations in 1904, but which came to an unhappy end by a difference between the President and Congress in respect of one of the terms of the treaty.[72] Intense interest was taken

in our proposition for such an agreement by all the nations, and it was the one question which became critical, if you believe that any question could be said to be critical, but in respect to which, at any rate, there were violent differences of opinion. It was hotly debated from the time of its introduction until a few days before the Conference came to an end, and finally, by vote of some thirty-two nations to nine, it was adopted in committee.[73] We thought that this gave us a right to carry it before the Conference in plenary session for final decision, but it was intimated that one great nation, if this were done, would break up the Conference by its withdrawal.

We thought that it ought to be presented to the world in the Final Act as a doctrine favored by the votes of four nations to one, carried to an advanced position which had never been dreamed of. But, on the whole, it was deemed wiser that a somewhat colorless resolution should be adopted, to the effect that the Conference approved of the general principal of arbitration, and that there were subjects that ought always to be referred to arbitration, and leaving it so to the future consideration of the nations. We declined to agree to this and abstained from voting, because we considered it too much of a

retreat from the advanced position which we had already secured for it in Committee. We claimed that the thirty-two nations who had favored it should be permitted to enter into such an agreement between themselves under the ægis of the Conference leaving it for the others to stay out or come in afterwards, as they pleased, for, from the beginning, it was premised that no one should be compelled to come into it, but each should stay out as long as it pleased.[74]

Now, if the doctrine of arbitration as a substitute for war is regarded as of value, have we not here made another very great advance by the work of this Conference? At least, I conclude so from the rapid and frequent resort to arbitration by all of the nations since that day. Even the failure of President Taft to carry through, unamended, his favorite treaties of arbitration with Great Britain and France, has not discouraged me at all.

There is no question under the Constitution as to the equal voice of the Senate as a part of the treaty-making power. The Senate can never be expected, and has no right, to abandon its position that it cannot abdicate its constitutional authority, to give or withhold its approval and consent from the actual and final agreement

which submits to arbitration a difference with another nation.

It seemed to me that the Executive made a great mistake in 1904, when the Senate insisted upon this power, in withholding the eleven treaties as amended by the Senate from further submission to the other contracting Powers, and I hope that that mistake will not be repeated in this instance. Any step forward, however slight the gain may be, is not to be lost or thrown away, for each step leads always to another and further advance. And certain it is that President Taft, in this instance, took a step far in advance of any that had been taken by the head of any state in the world's history, in proposing that all questions without reservation should be settled by arbitration, rather than by a resort to war. And that is the ultimate goal which we hope, at some distant day, to reach, when his name will be forever remembered as its author.

Another important measure that we were instructed to press and did press, with all our might, was in respect to future conferences. We had hoped to see established some machinery by which automatic action should take place, and the conference be called without waiting for the action of any particular nation. We claimed that

its organization and procedure should be in its own hands by means of an international executive committee, which should gather the views of the nations some two or three years beforehand, and form a tentative programme for submission to the Conference, and that thus the predominance and control of any particular nation should be avoided. That, in a modified form, was finally passed, but with great difficulty and after infinite and detailed discussion, which involved almost every word of the resolution.

It is very difficult to get the representatives of forty-four nations to agree upon phraseology, as I might illustrate in respect to two single words in this last proposition. We proposed at first that there should be another Conference held on the 15th day of June, 1914, seven years from the time we came together, and we advocated it strongly upon the doctrine that seven years is a magical number, being a period during which each man absolutely changes his structure, and that the men who would come to it then, even if they were the same, would be absolutely new men. This amused the Conference, but did not convince them. It was objected that it was too definite to say the 15th day of June, 1914. Germany said it did not want it and would not have

it before 1914, and so its representative proposed that it should be not earlier than 1914. Great Britain, anxious for such a meeting, made the counter proposition that it should be not later than 1914, and finally we proposed to settle the difference between them and make it about 1914. But when it was brought to the final test of the unanimous approval of all the forty-four First Delegates, even "about" was considered too definite, and so the recommendation was put and carried unanimously, as it stands, that another conference should be held at a period analogous to that which had elapsed since the last Conference.

This gives a little idea of the difficulties with which we had to contend in settling the phraseology of that as of every other important resolution. The result was that it stands resolved that two years before the date, or the probable date, of the meeting of the next conference, a preparatory committee—they would not agree to the word executive committee—but a preparatory committee, should be appointed by international action, which would gather the views of the nations, prepare a tentative programme, and recommend a scheme for the organization and procedure of the conference.[75]

But even thus mutilated, I think the adoption of

the measure which necessitates the calling of a third conference is a very great advance. Friends of peace, friends of arbitration may now depend upon it that every seven or eight years, there will be a similar conference, and that where the last conference left the work unfinished, the new conference will take it up. Thus progress from time to time will be steadily made and the great effort of the nations to avoid war by the establishment of arbitration and other peaceful methods will, in the end, be successful.

We cannot expect to succeed all at once, or to avoid war altogether, but great progress is being made, and if I have made a fair statement of the action of the Second Conference upon the principal questions which were brought before it, real advances were made towards the desired end, the London *Times* to the contrary notwithstanding.

Man is a fighting animal. He has fought his way to his present advanced position, which is the result of the survival of the fittest, but I am one of those who believe that by and by, by the general consensus of the public opinion of the world, he will be generally satisfied that fighting does not pay; that wars and the necessary preparation for war are, as the Emperor of Russia said in his first summons, a terrible burden, fatal to the

prosperity of nations who indulge in them, and that wars will become less and less frequent as time goes on.

The deliberate judgment of Secretary Root upon the work of the Conference, I am happy to believe, expresses the general opinion of all who are qualified to judge of it. He says:

"The work of the Second Hague Conference presents the greatest advance ever made at any single time toward the reasonable and peaceful regulation of international conduct, unless it be the advance made at the Hague Conference of 1899."

"The most valuable result of the Conference of 1899 was that it made the work of the Conference of 1907 possible. The achievements of the Conferences justify the belief that the world has entered upon an orderly process, through which, step by step, in successive conferences, each taking the work of its predecessor as its point of departure, there may be continual progress toward making the practice of civilized nations conform to their peaceful professions."[76]

I ought not to conclude these lectures without a word of appreciation of the happy choice made by the Nations, of the place for holding the Conferences, and of the more than cordial welcome

and lavish hospitality with which the Delegates were received by the government and people of Holland.

The Hague had long been known as the place where contending nations could peacefully settle their differences, and many treaties had been negotiated in Holland. The peaceful atmosphere of the ancient city and of the country of which it is the ornament, was most favorable to the work which we had in hand.

The Dutch are a peculiar and most interesting people. Since the expulsion of their Spanish tyrants in the sixteenth century, they have been for the most part quietly devoted to the arts of peace and to the cultivation of a prosperous commerce, from which, in the larger cities, many have realized liberal fortunes, which they peacefully enjoy, and which enable them to exercise a generous hospitality. They seem to be one of the most frugal and thrifty peoples on the face of the earth, and honesty is the prevailing trait. I often heard it said there that every man is bound not only to live within his income, but to save half of it. So habituated however are its leading citizens to a generous and royal exercise of hospitality, that they lost no occasion to entertain the Delegates in most delightful ways, sparing no

expense to make them feel at home in their protracted and laborious residence there.

Her Majesty, the youthful Queen, received the entire body of delegates at the royal palace at The Hague on two occasions, and again she entertained at dinner the First Delegates of all the Nations at the royal palace at Amsterdam, and there most graciously distributed to them beautifully engraved silver medals struck in honor of the Conference, and she subsequently presented similar medals to all the other Delegates.

The Dutch Government entertained the whole body of Delegates by an excursion to Rotterdam, where we, for the first time, got an idea of the maritime and commercial possibilities of Holland. The Burgomaster and Council of The Hague gave a most interesting ball at Scheveningen, at which the ancient customs and country dances of Holland were exquisitely performed, carrying the spectators back to an insight of life at The Hague two hundred years before. And the public officials and leading citizens vied with each other in entertaining us to the full extent of our capacity.

Belgium, on a delightful summer day, extended an invitation to us all, with our wives and families, to visit the ancient city of Bruges, where, in

sight of the beautiful Belfry celebrated by Longfellow, and in its quaint old medieval hall of state, we were entertained at luncheon, and afterwards witnessed a most artistic and beautiful production of the *toison d'or,* which, again, carried us back to a realization of the ancient sports of that nation.

The delegates, among themselves, exchanged civilities not always according to their wealth and ability, but ever in the same cordial and fraternal spirit, and it will not surprise you to hear that our delegation, although making the utmost of the modest allowance made to it by the State Department for that purpose, was left far in the rear by some of the younger South American nations, who seemed to place in the hands of their delegates the means of most rich and brilliant entertainments.

The moment of our assembling was most propitious for our work, for, at that time, as hardly ever, for centuries before, absolute peace prevailed among all the nations of the earth.

"No war or battle sound
Was heard the world around."

It was a thrilling moment when, as the representatives of all the organized and civilized countries of the world, for the first time in human

history, we assembled from all quarters of the globe, speaking all the languages, personating all the races, religions, creeds and customs, to work together for the cause of Peace, and however the results of our labors may come to be valued by posterity, they were honestly, earnestly and conscientiously performed, with the resolute purpose on all hands to advance the cause of civilization and of peace.

During the four months that we were together, the universal harmony that prevailed at the outset was never disturbed, however much our opinions and arguments conflicted.

It was toward the close of our deliberations that a single event occurred, made possible by the unstinted generosity of an American citizen whose name is indelibly associated with the cause for which we stood. I mean the laying of the corner-stone at The Hague of the International Palace of Peace, which by this time is almost completed, as a home for the international courts and a shelter for all future conferences, where, hereafter, it is hoped that the friends of peace may gather at stated intervals, from time to time, from all nations, tongues and climes, to aid in its promotion.

And so, at last, after the lapse of three cen-

turies, will be realized the dream of Grotius, the founder of international law, that all the civilized nations of the earth will submit to its dictates, whether in war or in peace.

And now that we are about to celebrate the completion of a century of unbroken peace between ourselves and all the other great nations of the earth, and are also on the eve of preparing for a Third Conference at The Hague, we may join with them in wishing a hearty Godspeed to that Conference and to all its successors forever.[77]

NOTES

NOTES

[1] See Encyclopedia Britannica, 11th ed., vol. I, p. 557 (article "Alexander I"). The authority upon which the statement in the article is based is Tatistcheff's "Alexandre I et Napoléon, 1801-1812" (1891), pp. 84-85. For full details of the negotiations see Martens' "Recueil des Traités et Conventions conclus par la Russie avec les Puissances Étrangères", vol. XI, pp. 84-88. For the treaty resulting from the negotiations see vol. II of the same work, pp. 433-448, especially "Separate Article VI", pp. 442-443.

[2] See Holls' "The Peace Conference at The Hague" (1900), pp. 8-9.

[3] See ibid., pp. 9-10.

[4] See ibid., p. 24.

[5] See ibid., p. 25.

[6] For Lord Salisbury's notes, see Holls' "The Peace Conference at The Hague", pp. 15, 28 and 30.

[7] See ibid., 72-73. For Col. Gilinsky's speech see pp. 73-75.

[8] For General (then Colonel) Gross von Schwarzhoff's address see ibid., pp. 76-80.

[9] See ibid., p. 83.

[10] For M. Bourgeois' appeal and his proposed resolution see ibid., pp. 87-90.

[11] See ibid., pp. 91-92.

[12] For the discussion of this important subject see ibid., pp. 134-161, and for the text of this convention see pp. 417-455.

[13] For the project of the Brussels Conference see Scott's "Texts of the Peace Conferences at The Hague, 1899 and 1907", pp. 382-389; for Dr. Lieber's draft instructions see ibid., pp. 350-376; and for an appreciation of Dr. Lieber's services and the relation of his instructions both to the Brussels project and the convention of the First Hague Conference, see two articles by Prof. Nys, entitled "Francis Lieber; his Life and Work", in the "American Journal of International Law" (1911), vol. V., pp. 84-117 and pp. 355-393—especially pp. 391-393.

[14] It was first proposed to make the prohibition perpetual, but upon motion of Capt. Crozier the prohibition was limited to cover a period of five years only. See Holls' "The Peace Conference at The Hague", p. 95. For the declaration see ibid., pp. 454-457.

[15] For the text of this declaration see Scott's "Texts of the Peace Conferences at The Hague, 1899 and 1907", pp. 332-334.

[16] Quoted from Hull's "The Two Hague Conferences" (1908), p. 80. For the text of Lord Reay's remarkable address see the official report of the Conference, entitled, "Deuxième Conférence Internationale de la Paix; Actes et Documents", vol. III, p. 153.

[17] See Hull's "The Two Hague Conferences", p. 82.

[18] For the reasons which made this convention unacceptable to the American delegation, see Holl's "The Peace Conference at The Hague", pp. 118-120. For the convention see ibid., pp. 460-463.

[19] For the prolonged discussion of the question of expanding bullets and the opposition of Great Britain and the United States to the convention on the subject, see Holls' "The Peace Conference at The Hague", pp. 98-117. For the declaration as voted by the Conference, notwithstanding the opposition of Great Britain, Portugal and the United States, see ibid., pp. 456-461. During the course

of the Second Hague Conference, Great Britain and Portugal, however, adhered to the declaration. See Deuxième Conférence Internationale de la Paix; Actes et Documents", vol. III, p. 159.

[20] For the discussion of this convention see Holls' "The Peace Conference at The Hague", pp. 121-134; and for the text as adopted, see ibid., pp. 462-473.

[21] See ibid., 134.

[22] Quoted from an article by Prof. de Martens in the "North American Review" for November, 1899, as quoted in Holls' "The Peace Conference at The Hague", p. 162.

[23] In the first article of the convention for the peaceful adjustment of international differences, "the Signatory Powers agree to use their best efforts to insure the peaceable adjustment of international differences", in order "to obviate, as far as possible, recourse to force in the relations between States." To give effect to this declared policy, the Conference was able to negotiate the convention for the peaceful adjustment of international differences, which deals specifically with good offices and mediation, Articles II to VIII; international commissions of inquiry, Article IX to XIV; arbitral justice, Articles XV to XIX; a permanent court of arbitration, Articles XX to XXIX; arbitral procedure. Articles XXX to LVII. For a discussion and analysis of the convention see Holls' "The Peace Conference at The Hague", pp. 173-305. For the text of the convention see the same volume, pp. 378-417.

[24] Convention for the peaceful adjustment of international differences, Art. II.

[25] Ibid., Art. III.

[26] Ibid., Arts. III-VII.

[27] Ibid., Art. VIII. This proposition was made by Mr. Frederick W. Holls in his individual capacity, and had the good fortune to be unanimously accepted by the Conference. Mr. Holls states in his interesting account

of it that it was suggested by M. de Nelidoff, when Russian Ambassador to Italy, who was, as is well known, President of the Second Hague Conference, as well as by Lord Russell of Killowen. Whoever may have been the author of the idea, it is, nevertheless, a fact that its adoption was due solely to Mr. Holls' initiative and skill. See Holls' "The Peace Conference at The Hague", pp. 188-203.

[28] See Encyclopedia Britannica (11th ed.), vol. XVIII, p. 22 (Article "Mediation"). For an instance of mediation between two great powers—Germany and Spain—concerning the Caroline Islands, in which Pope Leo XIII acted as mediator in 1885, see Moore's "International Arbitrations", vol. V, pp. 5043-5046; and on the subject of good offices and mediation in general, see Moore's "International Law Digest", vol. VII, pp. 1-22.

[29] For President Roosevelt's message of June 8, 1905, *mutatis mutandis*, to the Ambassador of the United States at St. Petersburg and the American Minister at Tokyo, as well as the Treaty of Portsmouth, of Sept. 5, 1905, between Japan and Russia, which was the result of President Roosevelt's good offices, see "Foreign Relations of the United States" (1905), pp. 807-828.

[30] For an admirable discussion of the war between Italy and Turkey and the means by which it might have been averted, see Sir Thomas Barclay's "Turco-Italian War and Its Problems" (1912).

[31] For a brief account of the Franco-German dispute of 1911 concerning Morocco, based upon official documents, so far as they are at present available, see "American Journal of International Law" (1912), pp. 159-167; and for the text of the convention of Nov. 4, 1911, settling the dispute, see the Supplement to this Journal (1912), pp. 62-66.

[32] Convention for the peaceful settlement of international differences, Arts. X-XIV.

[33] The opinion that war might have been averted, notwithstanding the destruction of the *Maine* is borne out by the official despatches between Gen. Woodford, American Minister to Spain, and President McKinley. Thus, on March 31, 1898, twelve days before President McKinley sent his war message to Congress, and twenty-one days before the official declaration of war, Gen. Woodford telegraphed the President: "I believe the ministry are ready to go as far as they can and still save the dynasty here in Spain. They know that Cuba is lost. Public opinion in Spain has moved steadily toward peace. No Spanish ministry would have dared to do one month ago what this ministry has proposed to-day." "Foreign Relations of the United States" (1898), p. 727.

On April 3, 1898, he telegraphed: "If conditions at Washington still enable you to give me the necessary time I am sure that before next October I will get peace in Cuba with justice to Cuba and protection to our great American interests. I know that the Queen and her present ministry sincerely desire peace and that the Spanish people desire peace, and if you can still give me time and reasonable liberty of action I will get for you the peace you desire so much and for which you have labored so hard." Ibid., p. 732.

On April 10, 1898, the day before the message was sent to Congress, Gen. Woodford telegraphed the President: "I hope that you can obtain full authority from Congress to do whatever you shall deem necessary to secure immediate and permanent peace in Cuba by negotiations, including the full power to employ the Army and Navy, according to your own judgment, to aid and enforce your action. If this be secured I believe you will get final settlement before August 1 on one of the following bases: Either such autonomy as the insurgents may agree to accept, or recognition by Spain of the independence of the

island, or cession of the island to the United States. I hope that nothing will now be done to humiliate Spain, as I am satisfied that the present Government is going, and is loyally ready to go, as fast and as far as it can. With your power of action sufficiently free you will win the fight on your own lines." Ibid., p. 747.

[34] For the agreement of Great Britain and Russia to submit the North Sea incident to an international commission of inquiry see "Foreign Relations of the United States" (1904), pp. 342-343. For the report of the commission of inquiry, organized in pursuance of the declaration of Nov. 25, 1904, see "Foreign Relations of the United States" (1905), pp. 473-476. For an interesting discussion of the question, see the address of Prof. John Bassett Moore at the Mohonk Conference on International Arbitration in 1905, "Report of the Eleventh Annual Meeting of the Mohonk Conference on International Arbitration" (1905), pp. 143-150.

[35] From William T. Stead's "What must follow the Conference?" in the (English) "Review of Reviews" for August, 1899, p. 151, quoted by Mr. Holls in his "The Peace Conference at The Hague", p. 212.

[36] Convention for the peaceful settlement of international differences, Art. XV.

[37] Ibid., Art. XVI.

[38] Ibid., Art. XVIII.

[39] See Holls' "The Peace Conference at The Hague", p. 231, and the footnote, pp. 231-236, for an enumeration of the various proposals to establish a system of peaceable adjustment of differences arising between nations.

[40] For Lord Pauncefote's address of May 26, 1899, proposing the establishment of a permanent court of arbitration, see Holls' "The Peace Conference at The Hague", pp. 231-237. For a consideration of the various plans submitted and the discussion of them, see ibid., pp. 237-257.

[41] Convention for the peaceful settlement of international differences, Art. XXIV.

[42] Ibid., Art. XXII

[43] Ibid., Art. XXIII.

[44] Ibid., Art. XXIV.

[45] Ibid., Art. XXV.

[46] Ibid., Arts. XXX-LVII.

[47] Ibid., XXVIII.

[48] See "Autobiography of Andrew D. White" (1905), vol. II, p. 354.

[49] The following is a list of the cases tried before a Temporary Tribunal chosen in accordance with the provisions of the Convention, with the date when the decision was rendered:

The Pious Fund Case. *United States of America v. Mexico,* 1902.

The Venezuela Preferential Payment Case. *Germany, Great Britain, and Italy v. Venezuela et als.,* 1904.

The Japanese House Tax Case. *Great Britain, France, and Germany v. Japan,* 1905.

The Muscat Dhows Case. *Great Britain v. France,* 1905.

The Casablanca Case. *France v. Germany,* 1909.

The Maritime Boundary Case. *Norway v. Sweden,* 1909.

The North Atlantic Coast Fisheries Case. *United States of America v. Great Britain,* 1910.

The Orinoco Steamship Company Case. *The United States v. Venezuela,* 1910.

The Savarkar Case. *France v. Great Britain,* 1911.

Case regarding interest on indemnity of 1879. *Russia v. Turkey.* (Not yet decided.)

The Canèvaro Case. *Italy v. Peru,* 1912.

The Dogger Bank Case before Commission of Inquiry. *Great Britain v. Russia*, 1905.

For a description of these cases see an article by Dr. James L. Tyron, Yale Law Review, vol. 20, p. 470.

[50] See the collection of General Treaties of Arbitration communicated to the International Bureau of the Permanent Court of Arbitration, published by M. Nijhoff, The Hague, 1911.

[51] For a description of the Postal Union and of other similar conventions see Professor Paul S. Reinsch's "Public International Unions" (1911).

[52] Professor Moore estimates the number of international arbitrations during the nineteenth century at 136 (See "Harvard Law Review", vol. XIV, p. 183.) La Fontaine estimates the number from 1794 to 1900 at 177. (See "Pasicrisie Internationale," p. viii.) Dr. Darby specifies no less than 471 instances, but includes in this number cases submitted to domestic as well as international commissions.

[53] See Holls' "The Peace Conference at The Hague", pp. 376-379.

[54] For these important communications see Scott's "Texts of the Peace Conferences at The Hague", pp. 93-99.

[55] See Secretary Root's note of October 12, 1905, to the Russian Ambassador, Scott's "Texts of the Peace Conferences at The Hague", pp. 90-101.

[56] On the admission of Latin America to the Second Hague Conference, see Scott's "The Hague Peace Conferences of 1899 and 1907", vol. I, pp. 95-100 and pp. 761-773.

[57] The American Delegates to the Second Hague Conference were: Hon. Joseph H. Choate, chairman; Gen. Horace Porter; Uriah M. Rose; David Jayne Hill; Gen. George B. Davis; Rear Admiral Charles S. Sperry; Wil-

liam I. Buchanan; James Brown Scott, technical delegate and expert in international law; Charles Henry Butler, technical delegate and expert attaché; Chandler Hale, Secretary.

[58] For the text of Secretary Root's instructions, see "Foreign Relations of the United States" (1907), pp. 1128-1139. This remarkable state paper is also to be found in Scott's "The Hague Peace Conferences of 1899 and 1907", vol. II, pp. 181-197.

[59] For the text of the convention respecting the limitation of the employment of force for the recovery of contract debts, see Scott's "Texts of the Peace Conferences at The Hague", pp. 193-198. The convention was advised and consented to by the Senate of the United States on April 2, 1908, subject to the following reserve and declaration:

> "Nothing contained in this convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign state: nor shall anything contained in the said convention be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions.
>
> "*Resolved further,* as a part of this act of ratification, that the United States approves this convention with the understanding that recourse to the permanent court of the settlement of differences can be had only by agreement thereto, through general or special treaties of arbitration heretofore or hereafter concluded between the parties in dispute; and the United States now exercises the option contained in Article 53 of said convention, to exclude the formulation of the 'compromis' by the permanent court, and hereby

excludes from the competence of the permanent court the power to frame the '*compromis*' required by general or special treaties of arbitration concluded or hereafter to be concluded by the United States, and further expressly declares that the '*compromis*' required by any treaty of arbitration to which the United States may be a party shall be settled only by agreement between the contracting parties, unless such treaty shall expressly provide otherwise." Ibid., p. 193, footnote.

[60] See "Deuxième Conférence Internationale de la Paix; Actes et Documents", vol. I, p. 338.

[61] For General Porter's remarkable address on introducing the proposition, see ibid., vol. II, pp. 229-233. For an English translation, see Scott's "American Addresses at the Second Hague Peace Conference", pp. 25-33.

[62] See "Deuxième Conférence Internationale de la Paix; Actes et Documents", vol. I, pp. 168-169.

[63] For the attitude of the American Delegation, see Mr. Choate's remarks on the International Court of Prize, July 11, 1907, in Deuxième Conférence Internationale de la Paix; Actes et Documents", vol. II, pp. 801-804. The address is to be found in English at pp. 810-813 of the same volume; also in Scott's "American Addresses at the Second Hague Peace Conference", pp. 70-76.

[64] For the International Prize Court Convention as finally adopted by the Conference, see Scott's "Texts of the Peace Conferences at The Hague", pp. 288-317.

[65] To meet the objection of the United States, an additional protocol, to be considered as an integral part of the Prize Court Convention and ratified at one and the same time, was negotiated at The Hague, Sept. 19, 1910. The additional protocol has been accepted by all the nations which have approved the original Prize Court Convention. Both documents were advised and consented to by the

Senate of the United States on Feb. 15, 1911. For the additional protocol, see the "American Journal of International Law" (1911), vol. V, Supplement, pp. 95-99.

[66] The Declaration of London was advised and consented to by the Senate of the United States on April 24, 1912.

[67] For the proceedings of the First Hague Conference concerning the immunity of private property on the high seas and for Dr. White's address, see Holls' "The Peace Conference at The Hague", pp. 306-321.

[68] See Deuxième Conférence Internationale de la Paix", vol. III, pp. 834-835.

[69] For the action of the American Delegation at the Second Hague Conference in the matter of the immunity of private property on the high seas, see Mr. Choate's address of June 28, 1907, in "Deuxième Conférence Internationale de la Paix", vol. III, pp. 750-764. For an English version of the address, see pp. 766-779; also Scott's "American Addresses at the Second Hague Peace Conference", pp. 1-24.

[70] For the action taken by the American Delegation in furthering the establishment of a truly permanent court of arbitral justice, see Mr. Choate's address of August 1, 1907, in "Deuxième Conférence Internationale de la Paix", vol. II, pp. 309-311; for an English version thereof see the same volume, pp. 327-330, also Scott's "American Addresses at the Second Hague Peace Conference", pp. 78-84; Mr. Scott's address of August 1, 1907, in "Deuxième Conférence de la Paix; Actes et Documents", vol. II, pp. 313-321, English version, Scott's "American Addresses at the Second Hague Peace Conference", pp. 84-97; Mr. Choate's remarks on introducing the proposed court of arbitral justice, August 13, 1907, in "Deuxième Conférence Internationale de la Paix; Actes et Documents", vol. II, pp. 593-594, English version, Scott's "American Addresses at the Second Hague Peace Conference", pp. 97-98; Mr.

Scott's address introducing the suggested composition of the court of arbitral justice, August 17, 1907; in "Deuxième Conférence Internationale de la Paix; Actes et Documents", vol. II, pp. 606-609, in English, Scott's "American Addresses at the Second Hague Peace Conference", pp. 99-103; Mr. Choate's address on the composition of the proposed court of arbitral justice, September 5, 1907, in "Deuxième Conférence Internationale de la Paix; Actes et Documents", vol. II, pp. 683-687, in English, ibid., pp. 689-693, also Scott's "American Addresses at the Second Hague Peace Conference", pp. 103-109; Mr. Choate's remarks on the selection of the judges of the court of arbitral justice by the principle of election, September 18, 1907, "Deuxième Conférence Internationale de la Paix; Actes et Documents", vol. II, pp. 697-699, in English, Scott's "American Addresses at the Second Hague Peace Conference", pp. 109-111; Mr. Scott's report to the Conference recommending the establishment of a court of arbitral justice, October 16, 1907, in "Deuxième Conférence Internationale de la Paix; Actes et Documents", vol. I, pp. 347-391, in English, Scott's "American Addresses at the Second Hague Peace Conference", pp. 112-177.

For the necessity of an international court of arbitral justice, for the problems involved in its establishment and the advantages to be derived from its successful operation, see the "Proceedings of the American Society for Judicial Settlement of International Disputes" (1910).

[71] For the recommendation of the Conference that the court be established through diplomatic channels as soon as an agreement was reached on the manner of appointing the judges, see Scott's "Texts of the Peace Conferences at The Hague", pp. 138-139, and for the draft convention relative to the creation of a judicial arbitration court, see the same volume, pp. 141-154.

[72] The eleven nations were Austria-Hungary, France,

Germany, Great Britain, Italy Japan, Mexico, Portugal, Spain, Sweden and Norway, Switzerland. The material provisions of the treaties were the following:

> "Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the two contracting parties, and which it may not have been possible to settle by diplomacy, shall be referred to the permanent court of arbitration established at The Hague by the convention of the 29th July, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honour of the two contracting states, and do not concern the interests of third parties. (Article I.)
>
> "In each individual case the high contracting parties, before appealing to the permanent court of arbitration, shall conclude a special agreement defining clearly the matter in dispute, the scope of the powers, of the arbitrators, and the periods to be fixed for the formation of the arbitral tribunal and the several stages of the procedure". (Article II.)

The Senate amended the treaties by striking out the word "agreement" in Article II and substituting therefor the word "treaty", the effect of which was to require a new special treaty for every arbitration under the general treaty, thus involving the advice and consent of the Senate in each instance. As the President and Secretary of State were unwilling to accept the amended treaties, the negotiations with foreign Governments were dropped. See Moore's "International Law Digest", vol. VII, pp. 102-103.

[73] The following nine States voted against the Anglo-American draft convention: Germany, Austria-Hungary, Belgium, Bulgaria, Greece, Montenegro, Roumania, Switzerland, Turkey. The following abstained from voting: Italy, Japan, Luxemburg. See "Deuxième Conférence In-

ternationale de la Paix; Actes et Documents", vol. II. p. 121.

For the attitude of the American Delegation in the matter of arbitration treaties see Mr. Choate's address on the American project of international arbitration, July 18, 1907, in "Deuxième Conférence Internationale de la Paix; Actes et Documents", vol. II, pp. 260-263, in English, pp. 265-267, and Scott's "American Addresses at the Second Hague Peace Conference", pp. 35-39; Mr. Scott's address on the *compromis* clause in the American project of international arbitration, August 31, 1907, in "Deuxième Conférence Internationale de la Paix; Actes et Documents", vol. II, pp. 517-519, in English, Scott's "American Addresses at the Second Hague Peace Conference", pp. 40-44; Mr. Choate's address on the Anglo-American project of international arbitration, October 5, 1907, in "Deuxième Conférence Internationale de la Paix; Actes et Documents", vol. II, pp. 72-77, in English, pp. 91-95, and Scott's "American Addresses at the Second Hague Peace Conference", pp. 46-53; Mr. Scott's address on the retention of the *compromis* clause in international arbitration, October 7, 1907, in "Deuxième Conférence Internationale de la Paix; Actes et Documents", vol. II, pp. 112-114, in English, Scott's "American Addresses at the Second Hague Peace Conference", pp. 53-57.

[74] The attitude of the American Delegation was expressed by Mr. Choate in his address of October 11, 1907. See "Deuxième Conférence Internationale de la Paix; Actes et Documents", vol. II, pp. 195-196, in English, pp. 202-203, and Scott's "American Addresses at the Second Hague Peace Conference", pp. 63-64.

[75] For this important recommendation, due to the instructions of Secretary Root, and its advocacy by the Chairman of the American Delegation, see Scott's "Texts of the Peace Conference at The Hague", pp. 139-140.

[76] See Mr. Root's Introduction to Scott's "Texts of the Peace Conferences at The Hague", p. iii.

[77] The following works in English, dealing with the Hague Conferences, may be recommended to readers desiring to study the subjects more in detail:

"The Peace Conference at The Hague", by Frederick W. Holls, D.C.L., New York (1910), The Macmillan Company.

"The Two Hague Conferences and Their Contributions to International Law", by William I. Hull, Ph.D., Boston (1908), Ginn & Co.

"The Hague Conferences and Other International Conferences concerning the Laws and Usages of War", by A. Pearce Higgins, LLD., Cambridge (1909), at the University Press.

"The Hague Peace Conferences of 1899 and 1907" (2 vols.) by James Brown Scott, Technical Delegate of the United States to the Second Peace Conference at The Hague, Baltimore (1909), The Johns Hopkins Press.

The texts of the Conferences with other related documents are to be found in Whittuck's "International Documents" (1908), Longmans, Green & Co., and Scott's "Texts of the Peace Conferences at The Hague, 1899 and 1907" (1908), Ginn & Co.